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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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THE FEDERAL REGISTER WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

(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)

RESERVATIONS: 202-523-4538



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Federal Register

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AF73

Prevailing Rate Systems; Definition of Santa Clara, CA, Wage Area to Alameda-Contra Costa, CA, Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation to abolish the Santa Clara, California, Nonappropriated Fund (NAF) wage area for pay-setting purposes. The Santa Clara wage area is composed of Santa Clara County (survey area) and San Mateo County (area of application). The current host activity for the Santa Clara wage area survey, Naval Air Station (NAS) Moffett Field, will close on July 1, 1994, and does not have the capability to carry out the local wage survey scheduled to begin in the Santa Clara wage area in September 1993. No other installation in the Santa Clara wage area has the capability to conduct a wage survey. This regulation redefines Santa Clara and San Mateo Counties to the area of application of the Alameda-Contra Costa, California, wage area.

DATES: This interim rule is effective on September 1, 1993. Comments must be received on or before January 28, 1994.

ADDRESSES: Send or deliver comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Mark Allen (202) 606-2848.

SUPPLEMENTARY INFORMATION: The Santa Clara, California, wage area is currently defined as a separate wage area for FWS pay-setting purposes. The Department of Defense notified OPM that the facilities of the host activity for the Santa Clara wage area, NAS Moffett Field, will be transferred to the National Aeronautics and Space Administration on July 1, 1994. Downsizing is underway and NAS Moffett Field, with 27 or fewer NAF employees, does not have the capability to conduct the wage survey required to begin in the Santa Clara wage area in September 1993 in accordance with appendix B to subpart B of part 532, title 5, Code of Federal Regulations. No other Federal activity in the Santa Clara wage area has the capability to conduct a local wage survey. The two counties currently constituting the Santa Clara wage area, Santa Clara and San Mateo, must therefore be combined with another wage area for pay-setting purposes.

The following criteria are taken into consideration when two or more counties are combined to constitute a single wage area:

- (1) Proximity of largest activity in each county;
- (2) Transportation facilities and commuting patterns; and
- (3) Similarities of the counties in:
 - (i) Overall Population;
 - (ii) Private employment in major industry categories; and
 - (iii) Kinds and sizes of private industrial establishments.

Geographically, NAS Moffett Field in Santa Clara County if about the same distance from the Oakland Army Base, host installation for the Alameda-Contra Costa wage area (approximately 68 km (42 miles)), and the Presidio of San Francisco, host installation for the San Francisco, California, wage area (approximately 69 km (43 miles)). Transportation facilities do not favor redefining Santa Clara to one wage area over any other. Commuting patterns for both out-commuters and in-commuters favor the Alameda-Contra Costa wage area. Santa Clara County, population 1,497,577, is more similar in overall population to the Alameda-Contra Costa wage area (2,082,905) than to the San Francisco wage area (723,959). Santa Clara County is also most similar to the Alameda-Contra Costa wage area in terms of kinds and sizes of private industrial establishments. In summary,

the regulatory criteria favor redefining Santa Clara County to the Alameda-Contra Costa wage area.

Geographically, the Menlo Park Department of Veterans Affairs (VA) Medical Center in San Mateo County is about the same distance from the Oakland Army Base in the Alameda-Contra Costa wage area (approximately 58 km (36 (miles))) and the Presidio of San Francisco in the San Francisco wage area (approximately 56 km (35 miles)). Transportation facilities do not favor either wage area over the other. Commuting patterns for out-commuters favor the San Francisco wage area, while commuting patterns for in-commuters only slightly favor the San Francisco wage area. San Mateo County, population 649,623, is more similar in overall population to the San Francisco wage area (723,959) than to the Alameda-Contra Costa wage area (2,082,905). San Mateo County is also most similar to the San Francisco wage area in terms of kinds and sizes of private industrial establishments.

Although this examination of regulatory criteria slightly favors redefining San Mateo County to the San Francisco wage area, an important additional consideration also applies in this case. The sole NAF employer in San Mateo County, the VA Medical Center near Menlo Park (psychiatric hospital), is an administrative division of the Palo Alto VA Medical Center (general hospital) in Santa Clara County. Only about five kilometers (3 miles) separate the two hospitals and the Menlo Park hospital is located only 1 kilometer (about one-half mile) inside the San Mateo County line.

All NAF employees at the two hospitals work in similar occupations in hospital canteens and are currently paid from the same wage schedule. Given the organizational relationship and minimal distance between the two VA facilities, changing the historic uniformity of pay treatment could be disruptive to personnel management in the two hospitals. These additional considerations indicate that San Mateo County should be redefined to the Alameda-Contra Costa wage area.

Based on this review of the criteria for establishing and combining wage areas, we find that the Santa Clara, California, wage area should be abolished as of September 1, 1993. As requested by the Department of Defense and Department

of Veterans Affairs, employees paid from the current Santa Clara, California, wage schedule will remain on their current schedule until the next wage schedule for the Alameda-Contra Costa wage area becomes effective on the first day of the first pay period beginning on or after January 1, 1994.

The Federal Prevailing Rate Advisory Committee reviewed this request and recommended approval by consensus.

Pursuant to sections 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking to accommodate changes necessitated by Department of Defense downsizing and expedite this wage area redefinition. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days to avoid the expenditure of resources needed to prepare for the required September 1993 survey of the Santa Clara, California, wage area. NAS Moffett Field is unable to function as the host activity for the survey and no other activity within the Santa Clara wage area has the capability to conduct the survey.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Lorraine A. Green,
Deputy Director

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATES SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 is also issued under 5 U.S.C. 552.

Appendix B to Subpart B—[Amended]

2. In appendix B to subpart B, the listing for the Santa Clara, California, wage area is removed.

3. Appendix D to subpart B is amended by removing the listing for the Santa Clara, California, wage area and by revising the wage area listing for the Alameda-Contra Costa, California, wage area to read as follows:

Appendix D to Subpart B of Part 532—Non-Appropriated Fund Wage and Survey Areas

* * * * *

Alameda-Contra Costa

Survey area

California:

Alameda

Contra Costa

Area of Application, Survey area plus:

California

Santa Clara¹

San Mateo¹

* * * * *

[FR Doc. 93-31603 Filed 12-28-93; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 532

RIN 3206-AF72

Prevailing Rate Systems; Clark-Hardin-Jefferson, KY, NAF Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation to delete Clark County, Indiana, from the survey area of the Clark-Hardin-Jefferson, Kentucky, Federal Wage System (FWS) Nonappropriated Fund (NAF) wage area for pay-setting purposes. The wage area will be renamed Hardin-Jefferson, Kentucky. OPM recently learned that there are no longer any NAF wage employees in Clark County. Because by law FWS NAF wage areas consist only of areas having NAF employees, Clark County must be dropped from this wage area.

DATES: This interim rule becomes effective on December 29, 1993. Comments must be received by January 28, 1994.

ADDRESSES: Send or deliver comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606-2848.

¹ Effective date January 1, 1994.

SUPPLEMENTARY INFORMATION: The Department of Defense notified OPM that the only NAF wage employees in Clark County, Indiana, were those employed by the Army and Air Force Exchange Service activity located at the Indiana Army Ammunition Plant, an activity that closed in July 1991.

Dropping Clark County from the survey area will not have a significant impact on the results of future wage surveys. Ft. Knox in Hardin County, Kentucky, employs 96 percent of the 676 NAF wage employees in the wage area. In the 1992 full-scale wage survey, only 176 (4.3 percent of the total) weighted matches were from firms in Clark County, Indiana. The remaining 2-county survey area will still meet the criteria in 5 CFR 532.219(b) for the establishment of NAF wage areas. There are far more than the minimum of 26 NAF wage employees in the survey area and local activities have the capability to do the survey. Within the survey area, there are more than the required minimum of 1,800 private enterprise employees in establishments within survey specifications.

The full-scale surveys will continue to be ordered in February of even numbered fiscal years, e.g. in February 1994. The Federal Prevailing Rate Advisory Committee (FPRAC) reviewed this request and by consensus recommended approval.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because the wage survey for the Hardin-Jefferson, Kentucky, wage area will be conducted in February 1994, requiring the drawing of survey establishment lists in December 1993.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
Lorraine A. Green,
Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B—[Amended]

2. Appendix B to subpart B is amended for Clark-Hardin-Jefferson, Kentucky, by revising the wage area listing from "Clark-Hardin-Jefferson" to "Hardin-Jefferson."

3. Appendix D to subpart B is amended by removing the wage area listing for Clark-Hardin-Jefferson and by adding in its place a listing for Hardin-Jefferson to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Area

* * * * *
 Kentucky
 * * * * *

Hardin-Jefferson

Survey Area

Kentucky:
 Hardin
 Jefferson

Area of Application, Survey area plus:

Indiana:
 Jefferson
 Kentucky:
 Fayette
 Madison
 Warren
 * * * * *

[FR Doc. 93-31604 Filed 12-28-93; 8:45 am]
 BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1910 and 1980

RIN 0575-AB56

Receiving and Processing Applications for Farmer Programs Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to conform to provisions of

the Agricultural Credit Improvement Act of 1992. This action will modify regulations governing the processing of Farmer Programs direct and guaranteed loan applications. The intended effect is to reduce application processing times.

DATES: Interim rule effective December 29, 1993. Written comments must be submitted on or before January 28, 1994.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, FmHA, USDA, room 6348-S, 14th Street and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mark A. Falcone, Deputy Director, Farmer Programs Loan Making Division, Farmers Home Administration, U.S. Department of Agriculture, South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 690-4019.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this interim rule in conformance with Executive Order 12866, and we have determined that it is not a "significant regulatory action." Based on information compiled by the Department, we have determined that this interim rule:

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

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice 7 CFR part 3015 subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of FmHA Programs and Activities" (December 23, 1983), Emergency Loans, Farm Ownership Loans, and Farm Operating Loans are excluded from the scope of

Executive Order 12372, which requires intergovernmental consultation with State and local officials. The Soil and Water Loan Program, however, is subject to the provisions of Executive Order 12372.

Programs Affected

These changes affect the following FmHA programs, as listed in the Catalog of Federal Domestic Assistance:

- 10.404—Emergency Loans
- 10.406—Farm Operating Loans
- 10.407—Farm Ownership Loans
- 10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, Subpart G, "Environmental Program." The FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (E.O.) 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the E.O.

Paperwork Reduction Act

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0575-0134 and 0575-0079 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The interim final rule does not revise or impose any new information collection or recordkeeping requirement from those approved by OMB.

Discussion of Interim Rule

The Agricultural Credit Improvement Act of 1992 (Public Law 102-554) (Act) required a number of changes to FmHA regulations governing the approval of Farmer Programs loans made and guaranteed by the Agency. The purpose of this interim rule is to conform FmHA regulations to the requirements of sections 332 and 333A of the Consolidated Farm and Rural Development Act (CONACT), as amended by sections 11 and 13 of the Act. Other changes have been made that are administrative and are not required

by the Act. These internal changes are for clarification purposes. There is no need for public comment on these changes.

It is the policy of the Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. This revision, however, is not published for proposed rulemaking because section 23 of the Act requires that interim regulations be issued to implement provisions of this Act. Therefore, this regulation is published as an interim rule with a 30-day comment period.

This interim rule deals with the following requirements of the Act:

Section 11—Time Period Within Which County Committee Is Required To Meet To Consider Applications for Farm Ownership and Operating Loans and Guarantees and Beginning Farmer Plans

Previous regulations required County Committees to review applications for direct and guaranteed loans, but did not set deadlines in all cases. CONACT section 332(e) requires the County Committee to make an eligibility determination on all direct and guaranteed farm ownership and operating loan applications, as well as the farm plans for those applying under FmHA's special operating loan program for beginning farmers. The County Committee must act on the application or farm plan not later than 5 days after receipt in the County Office when there is more than one other application or plan pending, and not later than 15 days when there are no other applications or plans pending. The Agency has amended 7 CFR part 1910, subpart A, § 1910.4(h) and 7 CFR part 1980, subpart B, § 1980.115(a) accordingly. It has clarified that these timeframes will be 5/15 "calendar" days, and are based upon County Offices receiving all information needed for the County Committee review.

Section 13—Processing of Applications for Farm Operating Loans

7 CFR part 1910, subpart A, § 1910.4(c) and (i), and 7 CFR part 1980, subpart B, § 1980.114, implement requirements of this section.

CONACT Section 333A(a)(2)(B) requires FmHA to notify direct and guaranteed farm operating loan applicants in writing within 10 calendar days of receipt of their application in the County Office of any additional information needed to make the application complete. If the information is not received within 20 calendar days of the date of the first letter, the Agency

must again notify the applicant, as well as the Agency's District Office, of the information still needed. The Agency has added language that applicants (and lenders for guaranteed applications) will be notified that their application will be withdrawn if information is not received within the established due dates. The Agency believes these timeframes are sufficient. An applicant always has the option to submit another application at any time.

CONACT Section 333A(a)(2)(B) also requires other USDA Agencies to provide information to FmHA within 15 calendar days of a request when an FmHA direct or guaranteed operating loan application is involved. The Agency has entered into Memorandums of Understanding with the Agricultural Stabilization and Conservation Service and the Soil Conservation Service stating information will be provided to FmHA within the required timeframe, whenever possible.

FmHA County Offices further are required by statute to notify the District Office of operating loan applications pending more than 45 days after receipt. The District Office must ensure that final actions are taken no later than 15 days after such notification. District Offices must notify the State Offices of applications pending more than 45 days after its receipt and provide the reasons they are pending. The Agency has clarified "applications" to mean "complete applications" and 45/15 days to mean 45/15 "calendar" days. CONACT Section 333A(a)(1) requires the Agency to approve or disapprove each application not later than 60 days after it is considered complete.

The statute also requires FmHA, on a monthly basis, to notify the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate, of operating loan applications on which final action has not been taken within 60 days of its receipt. Once again, the Agency has clarified this to mean "complete" applications. "Final action" means approval, denial, or withdrawal of the application. FmHA's FOCUS Ad-Hoc Reporting System, a nation-wide computerized information network, already provides the State and National Offices electronic access to such data. The Agency has set up a monthly procedure under which the required information will be gathered and collated using the FOCUS system.

For direct loans, the Agency has made revisions in 7 CFR part 1910, subpart A, § 1910.4(b) to clarify the applicant and FmHA's responsibilities in completing an application. This was done to reduce

confusion and expedite processing. Forms FmHA 1945-22, "Certification of Disaster Losses," and FmHA 1940-38, "Request for Lender's Verification of Loan Application," are needed when an applicant is applying for an emergency loan. These forms, previously shown as FmHA's responsibilities, are now shown as the applicant's responsibilities. It was misleading to have these listed under FmHA's responsibilities as the applicant has always had to supply information on these forms. No additional burden has been placed on applicants.

7 CFR part 1910, subpart A, § 1910.4(b) also has been clarified to state that several items are needed from certain applicants only. Now only new applicants must provide a brief written description of their farm training and/or experience. Only new applicants and existing borrowers with significant changes in their operations must provide a brief written description of their proposed operations. These clarifications reflect FmHA's desire to impose procedural requirements only as needed. In addition, several FmHA responsibilities previously needed to consider the application complete are no longer part of what is needed for a "complete application," but must be completed before loan approval is determined. When an application becomes complete, the 60-day time period for loan approval or rejection begins. Amendatory language also instructs County Supervisors to provide assistance as necessary to help applicants complete their applications.

Section 11 of the Act refers to direct and guaranteed farm operating and farm ownership loan applications, and section 13 refers to direct and guaranteed farm operating loan applications. However, FmHA has decided to make the provisions of these sections apply to all Farmer Programs loans, including Soil and Water loans and Emergency loans. This procedural change will maintain consistency for all farm loans, avoid complication and possible confusion in interpreting Agency instructions, and expedite the processing of loan requests.

In 7 CFR part 1980, subpart B, § 1980.114, notification procedures for incomplete loan guarantee applications have been tightened beyond the strict requirements of the Act. Lenders are notified that an application is incomplete no later than 5 (versus 10) calendar days after the application has been received in the County Office. Formerly, this notification requirement was contingent on the availability of a County Supervisor and employment ceilings affecting FmHA. The Agency approval timeframe for guaranteed

Farmer Programs loan applications is currently 30 days (14 days under the Certified Lender Program). Regulations now will require the District Office to ensure completion of processing on guarantee applications on which final action is not taken within this timeframe. FmHA instituted this change in response to concerns expressed by lenders regarding guaranteed processing times, and recommendations resulting from studies carried out by the Agency. Additional notification requirements previously discussed also have been adopted for guaranteed loan processing.

7 CFR part 1910, Exhibit A to subpart A has been removed from the Code of Federal Regulations, as everything in the Exhibit is contained in the body of the regulation (7 CFR part 1910, subpart A, § 1910.4(b)).

Finally, portions of § 1910.4 of subpart A of part 1910, and § 1980.116 of subpart B of part 1980 have been revised for clarification.

List of Subjects

7 CFR Part 1910

Applications, Credit, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1980

Agriculture, Loan programs—agriculture.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1910—GENERAL

1. The authority citation for part 1910 continues to read as follows:

Authority: 7 U.S.C 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Receiving and Processing Applications

2. Section 1910.4 is amended by revising paragraphs (b), (c), (d), (h), (i), and (k) to read as follows:

§ 1910.4 Processing applications.

* * * * *

(b) *Complete Farmer Programs applications and additional FmHA responsibilities.* All persons requesting an application will be provided Exhibit A (available in any FmHA office). The County Supervisor will provide assistance as necessary to help applicants complete their applications. Complete applications will be processed in the order of date received, except as outlined in § 1910.10 of this subpart. If

the application is complete when it is first received, a County Office official will stamp the filing date on the front of Form FmHA 410-1 and enter the date in the "Application Received" and "Application Completed" fields in the Application Processing Module of the Management Records System (MRS). On the date all information necessary to process an application is received, a County Office official will send the applicant FmHA Guide Letter 1910-A-3 (available in any FmHA office) notifying the applicant that the application is considered complete. The date entered in the "Application Completed" field in the Application Processing Module of MRS will establish the 30-day and 60-day timeframes for determining eligibility and loan approval/disapproval, respectively. The County Supervisor will verify the information furnished by the applicant, and record and assemble additional information needed to properly evaluate the applicant's qualifications and credit needs. Additional information may be obtained and verified by County Office records, personal contacts, and visits to the applicant's operation. A complete Farmer Programs application requires fulfillment of both the applicant and FmHA's responsibilities. Once this information is received and the application is considered complete, FmHA has additional responsibilities before loan approval is determined. The various responsibilities are as follows:

Applicant's Responsibilities for a Complete Application

(1) Completed Form FmHA 410-1, "Application for FmHA Services," including a signed Form FmHA 410-9, "Statement Required by the Privacy Act."

(2) If the applicant is a cooperative, corporation, partnership, or joint operation:

(i) A complete list of members, stockholders, partners or joint operators showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation, by each, or the percentage of interest held in the partnership or joint operation, by each.

(ii) A current personal financial statement from each of the members of a cooperative, stockholders of a corporation, partners of a partnership, or joint operators of a joint operation.

(iii) A current financial statement from the cooperative, corporation, partnership, or joint operation itself.

(iv) A copy of the cooperative's or corporation's charter, or any partnership

or joint operation agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors or members or stockholders authorizing specified officers of the cooperative, corporation, partnership, or joint operation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(3) A brief written description as to the farm training and/or experience of the applicant and the individual members of an entity applicant (new applicants only).

(4) Supporting and documented verification that the applicant (and all members of an entity applicant) cannot obtain credit elsewhere, including a guaranteed loan.

(5) Financial records for the past five years. Income tax records may be provided by the applicant when other financial records are not available.

(6) Five years of production history immediately preceding the year of application, unless the applicant has been farming less than 5 years.

(7) A brief written description of the proposed operation and the proposed size of the operation (required for new applicants and existing borrowers with significant changes in their operations).

(8) Verification of off-farm employment, if any. This will be used only when the applicant is relying on off-farm income to pay part of the applicant's expenses.

(9) Projected production, income and expenses, and loan repayment plan, which may be submitted on Form FmHA 431-2, "Farm and Home Plan," or other similar plans of operation acceptable to FmHA.

(10) Applicable items required in Exhibit M of subpart G of part 1940 of this chapter including SCS Form CPA-026, "Highly Erodible Land and Wetland Conservation Determination," Form AD-1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification," and Form FmHA 1940-20, as required by subpart G of part 1940 of this chapter.

(11) A legal description of farm, real estate property and/or (if applicable) a copy of any lease, contract, option or agreement entered into by the applicant which may be pertinent to consideration of the application, or when a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement.

(12) Form FmHA 440-32, "Request for Statement of Debts and Collateral," when applicable.

(13) Forms FmHA 1945-22, "Certification of Disaster Losses," and FmHA 1940-38, "Request for Lender's Verification of Loan Application," (EM loans only).

FmHA's Responsibilities for a Complete Application

(14) Send Form FmHA 410-7, "Notification to Applicant on Use of Financial Information from Financial Institution," to the applicant when applicable.

(15) Form FmHA 1945-26, "Calculation of Actual Losses" (EM loans only).

(16) Credit reports as provided in subparts B and C of this part.

(17) Form FmHA 1945-29, "ASCS Verification of Farm Acreages, Production and Benefits," (EM loans only).

(18) The Current/Past Debt Inquiry and Borrower Cross-Reference Systems. The Current/Past Debt Inquiry System must be reviewed for each application and copies of the screens must be attached to the applicant's file.

(19) For special beginning farmer or rancher operating (OL) loan assistance, a plan of operation will be developed for each of the first 5 years for which such assistance is requested. A projection of the financial status of the operation showing financial viability within the commitment period will also be developed. The 5-year plan and projection will be developed as described in § 1941.15 of subpart A of part 1941 of this chapter. This information will be presented on reports generated on the FmHA automated Farm and Home Plan system, or in other plans or documents consistent and acceptable to FmHA.

Additional FmHA Responsibilities

(20) Form FmHA 1924-1, "Development Plan," if necessary.

(21) Form FmHA 1940-22, "Environmental Checklist for Categorical Exclusions," or Class I or Class II assessment, whichever is applicable.

(22) Real estate and/or chattel appraisal, when applicable.

(c) *Incomplete Farmer Programs applications.* (1) When an incomplete application is received, a County Office official will stamp the filing date on the front of Form FmHA 410-1, and enter the date in the "Application Received" and "Incomplete Application" fields in the Application Processing Module of MRS.

(2) When an application that was received incomplete is completed, the date will be entered in the "Application Completed" field in the Application

Processing Module of MRS. The County Supervisor will follow the requirements of paragraph (b) of this section.

(3) Applicants who do not submit necessary information for complete applications, as described in paragraph (b) of this section, for EM, FO, OL and SW loans, will be handled as follows:

(i) No later than 10 calendar days after receipt of the application, the County Supervisor will send the applicant a letter similar to FmHA Guide Letter 1910-A-1 (available in any FmHA office). The letter will:

(A) List the additional information needed.

(B) State that the application cannot be processed until all required information is received in the FmHA County Office.

(C) Set a specific due date for the information. This date will be 20 calendar days after the date of the letter.

(ii) When information is needed from other USDA Agencies, the County Supervisor will inform those Agencies and the applicant of the information needed, and note the date of the request in the running record. For operating loan applications, the County Supervisor will request that the Agencies return the information to the County Office within 15 calendar days of the date of receipt of the request.

(iii) If the necessary information has not been received from the applicant 20 calendar days after the date of the first written notification of an incomplete application, the County Supervisor will immediately send the applicant a letter similar to FmHA Guide Letter 1910-A-2 (available in any FmHA office).

(A) The letter will again list the additional information needed, and state that the application cannot be processed until all the required information is received.

(B) The letter will set a due date of 10 calendar days from the date of the letter. It will further state that unless the applicant supplies the required information or contacts the County Office by that date, the application will be withdrawn without further notice.

(C) This letter will contain the Equal Credit Opportunity Act (ECOA) statement set forth in § 1910.6 (b)(1) of this subpart.

(D) A copy of this letter must be sent to the District Office at the same time it is sent to the applicant.

(iv) If the applicant has not contacted the County Office by the due date set in the second notification letter, the County Supervisor will then withdraw the application.

(v) All applications withdrawn will be handled in accordance with § 2033.7 of

FmHA Instruction 2033-A (available in any FmHA office).

(d) *Notifying applicants (including presently indebted borrowers) about Limited Resource loans.* Immediately after an application for OL, FO, SW, or EM assistance is received, and prior to County Committee action, the County Supervisor will send a letter similar to FmHA Guide Letter 1924-B-1 (available in any FmHA office) to the applicant telling the applicant about Limited Resource loans.

(h) *County Committee actions.* All actions by the committee regarding applicant eligibility will be taken in committee meetings attended by at least two committee members.

(1) When the County Office receives an application consisting of all pertinent information relative to the eligibility decision, including a plan required under § 1941.15 (e) of subpart A of part 1941 of this chapter in the case of special beginning farmer OL applicants, the County Committee will meet not later than:

(i) Five calendar days after the application's receipt by the County Office if there is more than one application pending needing County Committee action.

(ii) Fifteen calendar days after the application's receipt by the County Office if there are no other applications pending.

(2) County Committee action will be taken in the absence of the applicant. If the County Committee is unable to reach a decision based on the information available, it may request a personal interview with the applicant.

(3) County Committee members are required to adhere to all applicable provisions of this regulation when determining eligibility of applicants. Applicants may not be interviewed for reasons unrelated to proper eligibility considerations.

(i) *Timeliness.* Processing requirements for each program area are as follows:

(1) *Farmer Programs applications.* Each application must be approved or disapproved and the applicant notified in writing of the action taken, not later than 60 days after receipt of a complete application. The District Director will monitor the processing of all applications to ensure that each is processed in a timely manner and receives a final disposition (i.e. approval, rejection, or withdrawal) within the timeframes outlined in this section.

(i) Receipt by the applicant of a signed copy of Form FmHA 1940-1, "Request

for Obligation of Funds," will be considered written notice of loan approval.

(ii) If a complete application is not approved or disapproved 45 calendar days after all necessary information is received, the following steps will be taken:

(A) The County Supervisor will make sure that the data in the County Office MRS data base regarding the application are up-to-date, and that the reason it remains pending is noted. A selection of reasons is listed in MRS.

(B) Every week the District Director will generate a report, using the FmHA FOCUS Ad-Hoc Reporting System, based on the weekly upload of information from each County Office MRS data base. The District Director will note each complete application pending more than 45 calendar days, and immediately take steps to ensure that final disposition on the application is taken no later than 60 calendar days after receipt of the complete application.

(C) The Administrator will utilize MRS data and any other information available to comply with any statutory reporting requirements concerning the status of applications.

(2) *Single Family Housing (SFH) loans.* Written notice of eligibility or ineligibility will be sent to each applicant not later than 30 days after receipt of a complete application. If a determination of eligibility cannot be made within 30 days from the date of receipt of the complete application, the applicant will be notified in writing of the circumstances causing the delay and the approximate time needed to make a decision.

(3) *Labor Housing (LH) preapplications.* Preapplications must be determined eligible and feasible and the applicant notified in writing in accordance with applicable program regulations not later than 45 days after receipt of a complete preapplication. This eligibility determination will be made regardless of funding levels.

(4) *LH applications.* If a determination of eligibility cannot be made within 30 days from the date of receipt of a complete application, the applicant will be notified in writing of the circumstances causing the delay and the approximate time needed to make a decision.

(5) *Adverse decisions.* If an applicant is given an adverse decision, the applicant will be given appeal rights as provided in subpart B of part 1900 of this chapter. The letter will contain the ECOA statement set forth in § 1910.6(b)(1) of this subpart.

(k) *Active applications.* An applicant may voluntarily withdraw an application at any time. Except for incomplete Farmer Programs applications, when an applicant has been determined eligible, but further processing is delayed due to an apparent lack of interest, the applicant will be advised by letter that the application will be considered withdrawn unless the County Office receives a written request within 30 days that further consideration is desired. The letter to the borrower will contain the ECOA statement set forth in § 1910.6(b)(1) of this subpart.

(1) Applications for RH, RHS, and LH loans (posted on Form FmHA 1905-4, "Application and Processing Card—Individual," or inputted in the Application Processing Module of MRS) received during any fiscal year will remain active during the remainder of that fiscal year in which they were received, plus the subsequent fiscal year, unless withdrawn or disapproved, or unless the loan is closed.

(2) Applications received for FO, SW, OL, EM, and persons applying for RH loans on farms or nonfarm tracts who derive a major portion of their income from farming (inputted in the Application Processing Module of MRS), will remain active for 12 months from the date a complete application is received, unless withdrawn or disapproved, or unless the loan is closed.

(3) See paragraph (c) of this section for procedures for incomplete Farmer Programs applications.

(4) All applications which are withdrawn or rejected will be handled in accordance with § 2033.7 of FmHA Instruction 2033-A (available in any FmHA office). If notice has been received by FmHA that an adverse action is under investigation or in litigation, that application and all related material will be retained until final disposition of the matter.

(5) When an application has been approved and funds are not available, and the steps outlined in § 1910.6(g) of this subpart have been taken, the following provisions apply:

(i) The County Supervisor will, during the 11th month following loan approval, notify the applicant that the application will expire 12 months from the date of loan approval.

(ii) If the applicant wants the application to remain active, the applicant must provide the County Office with a written request within 30 days, requesting that the application remain active.

(iii) The applications retained at the applicant's request will be extended for only one additional 12-month period.

(iv) If the applicant fails to respond to the County Supervisor's written request, the application will be withdrawn.

Subpart A—[Amended]

3. Exhibit A to subpart A is removed and reserved.

PART 1980—GENERAL

4. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70

Subpart B—Farmer Program Loans

§ 1980.113 [Amended]

5. Section 1980.113 is amended by revising "Form AD-1026, 'Highly Erodible Land and Wetland Conservation Certification,'" to read "Form AD-1026, 'Highly Erodible Land Conservation (HELCC) and Wetland Conservation (WC) Certification,'" in paragraph (a)(10).

6. Section 1980.114 is amended by removing ADMINISTRATIVE paragraphs A. and F. and redesignating ADMINISTRATIVE paragraphs B. through E. as A. through D. respectively; by redesignating paragraphs (a) and (b) as paragraphs (c) and (d), respectively; by revising the introductory text; by revising the word "working" to read "calendar" in the first sentence of newly redesignated paragraph (c), and by adding new paragraphs (a) and (b) to read as follows:

§ 1980.114 FmHA evaluation of applications.

When the County Supervisor receives an application, the proper independent investigations, inspections, and appraisal reviews will be made to determine whether the loan applicant is eligible, whether the proposed loan/line of credit is for authorized purposes, whether there is reasonable assurance of a positive cash flow projection, and whether there is sufficient collateral and equity. The determinations will be recorded on Form FmHA 449-23, "Guaranteed Loan Evaluation (Farmer Programs)." This evaluation is for the benefit of FmHA, not the lender.

(a) *Incomplete applications.* (1) When an incomplete application is received, a County Office official will stamp the filing date on the front of Form FmHA 1980-25, and enter the date in the "Application Received" and "Incomplete Application" fields in the Application Processing Module of the Management Records System (MRS).

(2) When an application that was received incomplete is completed, the date will be entered in the "Application Completed" field in the Application Processing Module of MRS. The County Supervisor will follow the requirements of paragraphs (b)(2) and (b)(3) of this section.

(3) Lenders who omit from an application necessary information as described in § 1980.113 will be notified as follows:

(i) No later than 5 calendar days after the receipt of the application, the County Supervisor will send to the lender a letter similar to FmHA Guide Letter 1980-B-1 (available in any FmHA office). The letter will:

(A) List the additional information needed.

(B) State that the application cannot be processed until all required information is received in the County Office.

(C) Set a specific due date for the information. This date will be 20 calendar days after the date of the letter.

(ii) When information is needed from other USDA Agencies, the County Supervisor will inform those Agencies and the lender of the information needed, and note the date of the request in the running record. For operating loan guarantee applications, the County Supervisor will request that the information be returned to the County Office within 15 calendar days of the date of receipt of the request.

(iii) If the necessary information has not been received from the lender 20 calendar days after the date of the first written notification of an incomplete application, the County Supervisor will immediately send to the lender a letter similar to FmHA Guide Letter 1980-B-2 (available in any FmHA office).

(A) The letter will again list the additional information needed, and state that the application cannot be processed until all the required information is received.

(B) The letter will set a due date of 10 calendar days from the date of the letter. It will further state that unless the lender supplies the required information or contacts the County Office by that date, the application will be withdrawn without further notice.

(C) A copy of this letter will be sent to the District Office at the same time.

(iv) If the lender has not contacted the County Office by the due date set in the second notification letter, the County Supervisor will then withdraw the application.

(v) All applications withdrawn will be handled in accordance with § 2033.7 of

FmHA Instruction 2033-A (available in any FmHA office).

(b) *Complete applications.* (1) If the application is complete when it is first received, a County Office official will stamp the filing date on the front of Form 1980-25 and enter the date in the "Application Received" and "Application Completed" fields in the Application Processing Module of MRS.

(2) On the date all information necessary to process an application is received, a County Office official will send the lender FmHA Guide Letter 1980-B-3 (available in any FmHA office) notifying the lender that the application is considered complete.

(3) The date entered in the "Application Completed" field of MRS will establish the timeframes for eligibility and loan approval/disapproval.

* * * * *

7. Section 1980.115 is amended by redesignating paragraphs (a) and (b) as paragraphs (c) and (d) respectively; adding new paragraphs (a) and (b) and ADMINISTRATIVE paragraph C., and revising the introductory text to read as follows:

§ 1980.115 County Committee Review.

The County Committee will review loan applications to determine whether the loan applicants meet FmHA eligibility requirements and meet the definition of "beginning farmer or rancher," as defined in § 1980.106 of this subpart. See § 1980.176(k) for County Committee actions relative to special OL assistance to beginning farmers or ranchers. Applications do not need to be complete before they are reviewed by the County Committee; however, all information relating to the eligibility must be received.

(a) *County Committee timeframes.* When the County Office receives an application consisting of all information relative to the eligibility decision, the County Committee will meet not later than:

(1) Five calendar days after the application's receipt by the County Office if there is more than one application pending needing County Committee action.

(2) Fifteen calendar days after the application's receipt by the County Office if there are no other applications pending.

(b) *Notification of eligibility determination.* The County Supervisor will promptly notify both the lender and loan applicant in writing within 5 calendar days of the County Committee's determination.

* * * * *

Administrative

* * * * *

C. *Approval timeframes.* The District Director will monitor the processing of all applications to ensure that each is processed in a timely manner and receives a final disposition (i.e., approval, rejection, or withdrawal) within 30 calendar days. If an application is not approved or disapproved 30 calendar days after all necessary information is received, the following steps will be taken:

(1) The County Supervisor will make sure that the data in the County Office MRS data base regarding the application are up-to-date, and that the reason it remains pending is noted. A selection of reasons is listed in MRS.

(2) Every week the District Director will generate a report, using the FmHA FOCUS Ad-Hoc Reporting System, based on the weekly upload of information from each County Office MRS data base. The District Director will note each complete application pending more than 30 calendar days, and immediately take steps to ensure that final disposition on the application is taken no later than 60 calendar days after receipt of the complete application.

(3) The Administrator will utilize MRS data and any other information available to comply with any statutory reporting requirements concerning the status of applications.

§ 1980.116 [Amended]

8. Section 1980.116 is amended by removing the words "as set out in subpart A of part 1910 of this chapter," from the last sentence.

Dated: November 8, 1993.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93-31078 Filed 12-28-93; 8:45 am]

BILLING CODE 3410-07-U

7 CFR Part 1955

RIN 0575-AB63

Providing Additional Notice to Indian Tribes and Tribal Members; Lease With Option To Purchase Farmer Program Farm Real Estate Properties

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to allow additional notification and bidding instructions when dealing with the acquisition of real estate which is located on a federally recognized Indian Reservation. It also deals with the manner in which FmHA is allowed to dispose of inventory farm property through the use of lease with an option to purchase.

This action is necessary due to provisions in the Agricultural Credit Improvement Act of 1992 dated October 28, 1992, that requires the Agency to take certain actions when it becomes apparent that the Native American borrower owner/operator is unable to continue their operation. The intended effect is to ensure that timely and effective notification is made in order to allow real estate to be acquired either by the former owner/operator or the tribe in which the real estate is located.

DATES: Interim rule effective on December 19, 1993. Written comments must be submitted on or before January 28, 1994.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations, Analysis and Control Branch (RACB), Farmers Home Administration, USDA, room 6348, South Agricultural Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gary West, Senior Loan Officer, Farmer Programs Loan Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5437, South Agricultural Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 690-4008.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this interim rule in conformance with Executive Order 12866, and we have determined that it is not a "significant regulatory action." Based on information compiled by the Department, we have determined that this interim 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.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940-J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

- 10.404—Emergency Loans
- 10.406—Farm Operating Loans
- 10.407—Farm Ownership Loans
- 10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Discussion of Interim Rule

The purpose of this interim rule is to initiate the process of implementing provisions of the Agricultural Credit Improvement Act of 1992. Several sections of the Bill refer to the disposal of farm real estate. Section 16 states that if a farm has been classified as surplus and FmHA has been unable to sell the property, it would be permissible to offer the property for lease with an option to purchase to any party who may meet the requirements for FmHA assistance. Section 17 of the above mentioned Act requires that FmHA provide additional notice to those Native American borrowers who are unable to resolve their financial difficulties through present FmHA servicing action, that they could convey their property to FmHA and that FmHA will accept their offer under certain conditions. This section also provides

that the tribe which has jurisdiction over the reservation on which the real estate is located will receive notification prior to acquisition by FmHA. This notice will inform the tribe that FmHA has offered the borrower an opportunity to convey the property to the government, and if action is not taken to convey the property, FmHA will foreclose the account and the Agency will bid either the market value or the debt owed to FmHA, whichever is greater, at the foreclosure sale. The only deviation from the amount of the authorized bid will be for an allowance related to the investigation and clean-up of environmental hazards, such as hazardous waste. Other changes of an editorial nature may also be included.

List of Subjects in 7 CFR Part 1955

Foreclosure, Government acquired property, Sale of government acquired property, Surplus government property.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1955—PROPERTY MANAGEMENT

1. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

2. Section 1955.3 is amended by adding, alphabetically, a definition for "Loans to Native Americans" to read as follows:

§ 1955.3 Definitions.

* * * * *

Loans to Native Americans. Farmer Program loans secured by real estate located within the boundaries of a federally recognized Indian reservation. The Native American borrower-owner is defined as the party who pledged real estate as collateral for an FP loan and is the tribe or a member of the tribe with control over the reservation.

* * * * *

3. Section 1955.9 is added to read as follows:

§ 1955.9 Requirements for voluntary conveyance of real property located within a federally recognized Indian Reservation and owned by a Native American borrower-owner.

(a) The borrower-owner is a member of the tribe that has jurisdiction over the reservation in which the real property is located. An Indian tribe may also meet

the Native American borrower-owner criterion if it is indebted for FP loans.

(b) A voluntary conveyance will only be accepted after all preacquisition primary and preservation servicing actions have been considered in accordance with subpart S of part 1951 of this chapter.

(c) When all servicing actions have been considered under subpart S of part 51 of this chapter and a positive outcome cannot be achieved, the following additional actions are to be taken:

(1) The County Supervisor will notify the Native American borrower-owner and the tribe by certified mail, return receipt requested, and by regular mail if the certified mail is not received, that:

(i) The borrower-owner may convey the real estate security to FmHA and FmHA will consider acceptance of the property into inventory in accordance with paragraph (d) of this section;

(ii) The borrower-owner must inform FmHA within 60 days from receipt of this notice of the borrower-owner's decision to deed the property to FmHA;

(iii) FmHA must inform the borrower-owner and the borrower-owner's spouse and children of leaseback/buyback rights;

(iv) A wetlands conservation easement may be placed on the real estate security which the borrower-owner deeds to FmHA and which FmHA leases or conveys back to the borrower-owner;

(v) The borrower-owner has the opportunity to consult with the Indian tribe that has jurisdiction over the reservation in which the real property is located, or counsel, to determine if State or tribal law provides rights and protections that are more beneficial than those provided the borrower-owner under FmHA regulations;

(vi) If the borrower-owner does not voluntarily deed the property to FmHA,

(A) The Government may foreclose on the property;

(B) In the event of foreclosure, the property will be offered for sale;

(C) At the foreclosure sale, FmHA must offer a bid for the property that is equal to the fair market value of the property, or the outstanding principal and interest of the loan, whichever is higher;

(D) At the foreclosure sale, the property may be purchased by someone other than the Government; and

(E) If the property is purchased by another party, the property will not be placed in FmHA inventory and the borrower-owner will forfeit the rights and protections under FmHA regulations.

(vii) FmHA shall accept the offer of voluntary conveyance of the property unless a hazardous substance as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, is located on the property and will require FmHA to take remedial action to protect human health or the environment if the property is taken into inventory. In this case, a voluntary conveyance will be accepted only if FmHA determines that it is in the best interests of the Government to acquire title to the property.

(2) *Reserved.*

(d) When determining whether to accept a voluntary conveyance of a Native American borrower-owner's real property, the County Supervisor must consider:

(1) The cost of cleaning or mitigating the effects if a hazardous substance contamination is found on the property. A deduction equal to the amount of the cost of hazardous waste clean-up will be made to the fair market value of the property to determine if it is in the best interest of the Government to accept title to the property. FmHA will accept the property if clear title can be obtained and if the value of the property after removal of hazardous substances exceeds the cost of the hazardous waste clean-up.

(2) If the property is located within the boundaries of a federally recognized Indian reservation, and is owned by a member of the tribe with jurisdiction over the reservation, FmHA will credit the Native American borrower-owner's account based on the fair market value of the property or the FmHA debt against the property, whichever is greater.

4. Section 1955.10 is amended by removing the words "Worksheet for Accepting a Voluntary Conveyance of Farmer Program Security Property into Inventory," from the ninth sentence of the introductory paragraph; by revising the reference "§ 1955.10(h)" to read "§ 1955.10(g)" in the last sentence of paragraph (f)(1) (iii); by redesignating paragraphs (f)(2) (i) and (ii) as paragraphs (f)(2) (iv) and (v) respectively; by adding new paragraphs (f)(2) (i), (ii), and (iii); and by revising the introductory text of paragraph (f)(2), and paragraphs (f)(3)(i)(M), (f)(3)(ii)(F), and (g)(1) to read as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

* * * * *

(f) * * *

(2) *Consolidated Farm and Rural Development Act (CONACT) loans to individuals.* For CONACT loans to

individuals, as defined in § 1955.3 of this subpart, where the FmHA indebtedness plus any prior liens exceeds the market value of the property, the County Committee must take certain action if it is to recommend that the borrower and any cosigner be released from liability.

(i) *Release from liability.* The County Committee must determine that the borrower(s) and any cosigner do not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the voluntary conveyance, taking into consideration their assets and income at the time of the conveyance; and that the borrower and any cosigner have cooperated in good faith, used due diligence to maintain the security against loss, and have otherwise fulfilled the covenants incident to the loan to the best of their ability; and they must recommend that the borrower and any cosigner be released from personal liability for any balance due on the secured indebtedness upon conveyance of the property to the Government. This action will be documented by checking the appropriate block on Form FmHA 440-2, "County Committee Certification or Recommendation," as specified in the Forms Manual Insert (FMI).

(ii) *Unsatisfied indebtedness.* If the County Committee does not recommend release from liability, the borrower must be informed that the indebtedness cannot be satisfied but a credit can be given equal to the market value less prior lien(s) (if any) and the borrower will determine if the borrower wishes to make a new offer on that basis. If a new offer is made and accepted, the account will be handled as an unsatisfied account as outlined in § 1955.18(f) of this subpart. When the FmHA debt less the market value and prior lien(s) exceeds \$150,000, release of liability must be approved or disapproved by the Administrator or designee; otherwise, the State Director must approve or disapprove the release of liability. All cases requiring a release of liability will be submitted for review in accordance with Exhibit A (available in any FmHA office).

(iii) *Crediting accounts.* FmHA will credit the account of a Native American borrower-owner whose real property secured an FP loan with the fair market value or the FmHA debt against the property, whichever is greater. To receive such credit, the real property must be located within the boundaries of a federally recognized Indian reservation and the County Committee must certify that:

(A) The borrower-owner is a member of a tribe or the tribe.

(B) The property is located within the confines of a federally recognized Indian reservation.

* * * * *

(3) * * *

(i) * * *

(M) Form FmHA 440-2, executed in accordance with the FMI, when applicable.

(ii) * * *

(F) Form FmHA 442-3;

* * * * *

(g) *Closing of conveyance.*

(1) The conveyance to the Government will be considered closed when the recorded deed has been returned to FmHA, a certification of title is received from the closing agent that title is vested in the Government with no outstanding encumbrances other than the FmHA lien(s) or previously approved prior liens, and the borrower is notified of the acceptance of the conveyance. For loans to organizations, OGC will be requested to review the case to verify that it was closed properly. The property will be assigned an ID number and entered into the Acquired Property Tracking System through the Automated Discrepancy Processing System (ADPS) terminal in the County Office.

* * * * *

5. Section 1955.15 is amended by adding the words "or tribal" after the first occurrence of the word "State" in the second sentence of the introductory text of paragraph (d)(3)(i); by adding a sentence to the end of the introductory paragraph and paragraph (d)(1); and by revising the introductory text of paragraph (d)(3)(i)(A) and paragraphs (f)(1), (3), and (6) to read as follows:

§ 1955.15 Foreclosure by the Government of loans secured by real estate.

* * * For real property located within the confines of a federally recognized Indian reservation and owned by a Native American borrower, proper notice of voluntary conveyance must be given as outlined in § 1955.9 (c)(1) of this subpart.

* * * * *

(d) * * *

(1) * * * For real property located within the confines of a federally recognized Indian reservation owned by a Native American borrower-owner, an analysis of whether FmHA should acquire title must include facts which demonstrate the fair market value after considering the cost of clean-up of hazardous substances on the property.

* * * * *

(3) * * *

(i) * * *

(A) Payment in full [see Exhibit D of this subpart (available in any FmHA

office)] may consist of the following means of fully satisfying the debt.

* * * * *

(f) *Completion of foreclosure—(1) Foreclosure advertisement for organization loans subject to title VI of the Civil Rights Act of 1964.—(i)* The advertisement for foreclosure sale of property subject to title VI of the Civil Rights Act of 1964 will contain a statement substantially similar to the following: "The property described herein was purchased or improved with Federal financial assistance and is subject to the nondiscrimination provisions of title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 and other similarly worded Federal statutes and regulations issued pursuant thereto that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age or sex in programs or activities receiving Federal financial assistance, for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended or for so long as the purchaser owns it, whichever is later." At least 30 days before the foreclosure sale, the County Supervisor will notify, in writing, the Indian tribe which has jurisdiction over the reservation, and in which the real property is owned by a Native American member of said tribe that a foreclosure sale will be conducted to resolve this account, and will provide:

- (A) Projected sale date and location;
- (B) Fair market value of property;
- (C) Amount FmHA will bid on the property; and
- (D) Amount of FmHA debt against the property.

(ii) The purchaser will be required to sign Form FmHA 400-4, "Assurance Agreement," if the property will be used for its original or similar purposes.

* * * * *

(3) *Expenses.* Expenses which are incurred in connection with foreclosure, including legal fees, will be paid at the time recommended by OGC by processing the necessary documents as outlined in § 1955.5 (d) of this subpart. Costs will be charged as outlined in FmHA Instruction 2024-A (available in any FmHA office).

* * * * *

(6) *Amount of Government's bid.* Except for FP loans and as modified by paragraph (f)(7)(ii) of this section, the Government's bid will be the amount of FmHA's gross investment or the market value of the security, whichever is less. For real property located within the confines of a federally recognized Indian reservation and which is owned

by an FmHA borrower who is a member of the tribe with jurisdiction over the reservation, the Government's bid will be the greater of the fair market value or the FmHA debt against the property, unless FmHA determines that, because of the presence of hazardous substances on the property, it is not in the best interest of the Government to bid such amount, in which case there may be a deduction from the bid for the costs for hazardous material assessment and/or mitigation. For FP loans, except as modified by paragraph (f)(7)(ii) of this section, the Government's bid will be the amount of FmHA's gross investment or the amount determined by use of Exhibit G-1 of this subpart, whichever is less. When the foreclosure sale is imminent, the State Director must request the servicing official to submit a current appraisal (in existing condition) as a basis for determining the Government's bid. Except for MFH properties, if an FmHA appraiser is not available, the State Director may authorize an appraisal to be obtained by contract from a source outside FmHA in accordance with FmHA Instruction 2024-A (available in any FmHA office). For MFH properties, prior approval of the Assistant Administrator, Housing, is necessary to procure an outside appraisal.

* * * * *

6. Section 1955.18 is amended by revising the words "Part 1955 of this chapter" to the words "this part" in the last sentences of the introductory text of paragraph (b) and paragraph (c), and by revising the sixth sentence of paragraph (a) and paragraph (d) to read as follows:

§ 1955.18 Actions required after acquisition of property.

* * * * *

(a) * * * For MFH projects with rental assistance, Form FmHA 1944-55 must be attached to Form FmHA 1965-19 indicating the status of the rental assistance while the property is in inventory. * * *

* * * * *

(d) *Inventory account.* The Finance Office will establish an inventory account under the Property ID Number assigned. The value of the property entered into the inventory account will be the market value as of the date acquired.

* * * * *

Subpart C—Disposal of Inventory Property

7. Section 1955.107 is amended by adding the words "County Committee Certification or Recommendation," following "Form FmHA 440-2" in

paragraph (d)(2) and by revising paragraph (a) to read as follows:

§ 1955.107 Sale of suitable property (CONACT).

* * * * *

(a) *Sale by FmHA.* When possible, the sale of suitable CONACT property should be handled by County Supervisors and District Directors. The date Form FmHA 1955-40, "Notice of Real Property for Sale," is posted is the date the property is offered for sale. Farm property will be advertised for sale by publishing, as a minimum, three consecutive weekly announcements at least twice annually, in at least one newspaper that is widely circulated in the county in which the farm is located. Also, either Form FmHA 1955-40 or Form FmHA 1955-41, "Notice of Sale," will be posted in a prominent place in the County Office. If a program applicant is not available locally, the official with responsibility for the property will advise other FmHA District and County Offices in the market area of the availability of the property. The second advertisement will contain a paragraph that indicates that if no party purchases the property, FmHA will consider leasing the property with or without an option to purchase to any party that would be able to meet the eligibility and priority criteria established to purchase inventory farm property. When requested by the County Supervisor, State Office Farmer Programs staff will assist in publicizing property for sale or lease by informing other FmHA County, District, and/or State Offices. Maximum publicity should be given to the sale under guidance provided by § 1955.146 of this subpart and care should be taken to spell out eligibility criteria. Tribal Councils or other recognized Indian governing bodies having jurisdiction over Indian reservations as defined in § 1955.103 of this subpart shall be responsible for notifying those parties listed in § 1955.66 (d)(2) of subpart B of this part.

* * * * *

Dated: October 26, 1993.
Bob Nash,
Under Secretary for Small Community and Rural Development.
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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 70, 72
RIN 3150-AE16

Self-Guarantee as an Additional Financial Assurance Mechanism

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations for decommissioning licensed facilities to allow certain non-electric utility licensees to use self-guarantee as a means of financial assurance. The rule reduces the cost burden of financial assurance while providing NRC with sufficient assurance that decommissioning costs will be funded. This rule grants a petition for rulemaking (PRM-30-59) from General Electric Company and Westinghouse Electric Corporation and completes action on the petition.

EFFECTIVE DATE: January 28, 1994.

FOR FURTHER INFORMATION CONTACT: Clark Prichard, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone (301) 492-3734.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 1993 (58 FR 3515), the NRC published a notice of proposed rulemaking that would allow self-guarantee as an additional mechanism for complying with the regulations on financial assurance for decommissioning. This action was in response to a petition for rulemaking (PRM-30-59) from the General Electric Company (GE) and the Westinghouse Electric Corporation (Westinghouse). The notice of receipt of the petition was published on September 25, 1991 (56 FR 48445). The petitioners requested that the NRC amend its decommissioning regulations contained in 10 CFR parts 30, 40, 50, 70, and 72 to provide a means for self-guarantee of decommissioning funding costs by certain NRC licensees who meet stringent financial standards and related reporting and oversight requirements. The petitioners proposed that electric utility reactor licensees under 10 CFR part 50 not be affected by the proposals in the petition.

Under the original decommissioning regulations (53 FR 24018; June 27, 1988), licensees were permitted to provide financial assurance for decommissioning funding through

prepayment, insurance, surety bond, letter of credit, or parent company guarantee. Electric utilities were also allowed to establish an external sinking fund. The proposed rule sought public comments on amendments to parts 30, 40, 50, 70, and 72 to allow self-guarantee as an additional method of complying with the decommissioning requirements in those parts.

The objective of this rule is to reduce the licensee's cost burden without causing adverse effects on public health and safety. The regulatory analysis developed for this rule estimates that the annual industry cost savings would be approximately \$730,000 if all licensees meeting the criteria use the self-guarantee. This estimate is based on rather conservative assumptions (i.e., \$750,000 total decommissioning cost per license); the actual cost savings may be considerably greater.

The cost savings would result from the elimination of the cost of third party financial assurance for licensees qualifying to use the self-guarantee. Annual fees for letters of credit, surety bonds, and other forms of third party financial assurance typically are approximately 1.5 percent of the amount of financial assurance provided.

A. Proposed Criteria

The proposed criteria for corporate self-guarantee included these financial criteria:

- (1) Tangible net worth of at least \$1 billion;
- (2) Tangible net worth at least 10 times the current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;
- (3) Assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the current decommissioning cost estimate (or the current amount required if certification is used); for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;
- (4) A current bond rating of AAA, AA, or A as issued by Standard and Poors (S&P), or Aaa, Aa, or A as issued by Moodys.

Procedural requirements proposed were:

- (1) The company must have at least one class of equity securities registered under the Securities Exchange Act of 1934;
- (2) The company shall provide the Commission with copies of all reports filed with the Securities and Exchange

Commission under section 13 of the Securities Exchange Act of 1934;

(3) The company's independent certified public accountant must compare the data used by the company in the financial test with the company's independently audited year-end financial statements;

(4) The company must repeat passage of the test within 90 days after the close of each succeeding fiscal year; and

(5) The company must notify NRC within 90 days of any matters that may come to the attention of the auditor that may cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

The self-guarantee would be available only for an applicant or licensee having no parent company holding majority control of its voting stock.

B. Alternative Criteria

Because a majority of commenters on the notice of receipt of the petition questioned the need for the financial criteria to be so stringent, the Commission offered an alternative set of criteria to that of the petition as contained in the proposed rule. The alternative was the same financial criteria presented in the proposed rule, without the \$1 billion net worth requirement.

A company's tangible net worth is an important factor in determining its bond rating. The rating itself, combined with the other criteria, may be a sufficient indicator of financial stability. Because all firms qualifying would need an A or better bond rating, this alternative may not be riskier in terms of financial assurance than the proposed rule. The regulatory analysis examined the effects on availability of the self-guarantee to licensees of deleting the \$1 billion tangible net worth requirement from the financial criteria in the proposed rule, all other criteria remaining constant. The conclusion was that this alternative, if adopted, would allow an additional 7 firms to use the proposed self-guarantee. (Approximately 20 firms would qualify with the \$1 billion criterion included.) The additional availability would save industry an estimated \$130,000 annually and, since all firms would need an A or better bond rating, would maintain a high level of assurance. An A or better bond rating indicates that a company has substantial net worth. A company which merits an A or better bond rating has passed a stringent review by the independent ratings agencies of its ability to meet its financial obligations. A report by Moody's gives the default rate associated with companies whose bonds

are rated A or above in 1 of the 3 years prior to default as only 0.13 percent annually.¹ In addition, all companies, irrespective of their overall size, must demonstrate that they possess tangible net worth of at least 10 times the current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent grantor.

The alternate criteria, as well as the criteria in the proposed rule, do not apply to electric utilities. Electric utilities would be excluded from using self-guarantee under either set of criteria. Public comments were requested on this alternative financial criteria—the criteria in the proposed rule without the \$1 billion tangible net worth requirement.

Minor Wording Changes

The proposed rule deleted the phrase "should the licensee default" from §§ 30.35(f)(2), 40.36(e)(2), 50.75(e)(1)(iii), 70.25(f)(2), and 72.30(c)(2) to accommodate self-guarantee.

Summary of Public Comments

The Commission received fourteen comment letters in response to the publication of the notice of proposed rulemaking. All but one of the letters supported a revision of the Commission's regulations to allow self-guarantee. The following is a summary of significant public comments and the Commission's response. A more detailed analysis of public comments has been prepared. This analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington DC.

Opposition to Self-Guarantee

One commenter opposed the proposed self-guarantee mechanism on the grounds that current capabilities of electronically transferring funds make self-guarantee meaningless even if a firm has initially demonstrated that it has the required assets. The commenter argued that recent failures of pensions and health benefits assured by self-guarantee indicate that self-guarantees cannot be trusted.

Response: NRC does not agree that a well-designed self-guarantee mechanism cannot be trusted to provide financial assurance. Self-guarantees have been used in a number of applications without incurring the problems pointed out by the commenter. The

Environmental Protection Agency currently allows self-guarantee as a means of financial assurance for cleanup of hazardous waste treatment, storage, and disposal facilities. Because the qualification to use self-guarantee is based in large part on a specified bond rating, the NRC believes that it is tying the self-guarantee to an accurate measure of the financial strength of the self-guarantor. By requiring annual recertification, and submission of SEC reports, the NRC believes that potential problem situations will be identified and addressed in a timely manner.

Use of Self-Guarantee by Electric Power Utility Licensees

One commenter indicated that electric utilities licensed under Part 50, which are prohibited from using the proposed self-guarantee, should be allowed to use that option. The commenter, pointing to the Regulatory Analysis, argued that NRC's stated reasons do not create a strong technical basis for not allowing nuclear power licensees to use self-guarantee.

Response: The objective of the rule is to reduce the licensee's cost burden without causing adverse effects on public health and safety. The Commission already allows electric utilities to accumulate decommissioning funds in an external sinking fund. Unlike other licensees who are subject to financial assurance for decommissioning, electric utilities do not have to provide the full amount of required financial assurance "up front" but can instead build up their sinking funds over time. Thus, electric utilities already are permitted a cost-reducing financial assurance mechanism.

Requirement That 90 Percent of Total Assets Be in the U.S.

One commenter suggested dropping what is described as the requirement that self-guarantors demonstrate that 90 percent of their total assets are located in the United States, because otherwise some large, multinational companies will be excluded from using the self-guarantee simply because a majority of their assets may be outside the U.S.

Response: The proposed self-guarantee financial test included a provision requiring the self-guarantor to show that it had assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as a self-guaranteeing licensee and as parent-guarantor. A licensee using self-

¹ Corporate Bond Defaults and Default Rates, Moody's Special Report, January, 1991, p. 32.

guarantee does not have to show that 90 percent of its assets are in the United States. The licensee could show that it has assets in the U.S. amounting to at least 10 times decommissioning costs. A large, multinational corporation should readily be able to demonstrate that it has assets in the United States amounting to at least 10 times the decommissioning responsibilities.

Net Worth Criterion

Several commenters favored the self-guarantee concept but argued for less stringent financial criteria.

Response: The Commission has considered various alternative financial criteria. It has decided to drop the \$1 billion tangible net worth criterion. However, tangible net worth will be an important factor in the requirements for self-guarantee for several reasons:

- (1) The financial criteria in the final rule contain the requirement that to qualify to use self-guarantee, a licensee must have tangible net worth at least 10 times decommissioning costs, and
- (2) A company must have at least an A bond rating. The A or better bond rating indicates that a company has substantial net worth. Net worth is an important factor in comprising a bond rating.

Bond ratings are reviewed often, and changed in response to changes in the issuer's financial condition. A bond rating of A or better assures that the financial strength of a licensee offering a self-guarantee has been independently reviewed and affirmed. It provides an excellent guide to the ability of a company to meet its obligations. According to Moodys, default rates associated with companies whose bonds are rated A or above in 1 of the 3 years prior to default are 0.13 percent annually.²

The criteria for parent guarantee were given consideration as financial criteria for self-guarantee in the final rule. Under current NRC decommissioning regulations, the parent company of a licensee that meets the financial criteria in 10 CFR part 30, appendix A may guarantee that funds will be available to decommission the facility of its subsidiary licensee. The financial criteria for the NRC parent guarantee include a lower bond rating (BBB or Baa) requirement and a lower net worth times decommissioning cost requirement (6, rather than 10 times decommissioning costs) than the criteria in this rule.

The Commission has decided against using the criteria for parent guarantee in

the rule. This is the first instance in which self-guarantee is being allowed under the Commission's decommissioning regulations. The Commission prefers that the more conservative criteria be used. At some future time, when the Commission has gained some experience with self-guarantee, it may consider an appropriate revision of the financial criteria.

Use of Self-Guarantee by Non-Profit Entities

Several commenters suggested that NRC should amend the proposed rule to allow universities and other non-profit entities to use self-guarantee. They argued that many non-profit entities have been in existence and been financially stable for long periods of time. These commenters proposed several alternative criteria, including size of endowments, that they said could be used to assess the financial strength of non-profit entities.

Response: NRC plans to begin shortly a study of extending the availability of cost-saving financial assurance alternatives to non-profit entities other than universities. A similar study for universities will be deferred until after planned rulemaking on fee recovery. However, including these non-profit entities in the self-guarantee program established by this rulemaking presents certain problems. The analysis which was prepared to evaluate the financial criteria in the proposed rule did not include non-profit entities. In order to extend the use of self-guarantees to non-profit entities, new criteria would have to be developed to assess the financial strength of the non-profit licensees. Development of financial criteria to assess the qualifications of a non-profit entity to provide a self-guarantee is likely to require detailed consideration of the different financial accounting methods used by medical institutions. The financial accounting and reporting of non-profit entities are unique and substantially different from the accounting and reporting of for-profit entities.

The financial reporting practices of public and private hospitals generally follow standards for these institutions established by the American Institute of Certified Public Accountants. Development of financial criteria for a self-guarantee for hospitals also would involve analysis of the various accounting funds utilized and establishment of adequate criteria.

NRC's review of decommissioning financial assurance submissions identified third-party financial mechanisms, such as surety bonds and

letters of credit, as well as escrows and trusts, as the financial mechanisms used most often by private non-profit entities. In a few instances, private non-profit entities have sought to use parent company guarantees. Publicly owned non-profit entities, particularly public universities, have sought to use statements of intent (a financial assurance mechanism available only to government licensees). To the extent that non-profit entities have been able to make use of guarantees or statements of intent, cost saving financial assurance alternatives already exist for those licensees.

The Commission anticipates that in the future it will carry out a study of potential self-guarantee criteria for non-profit licensees other than universities. Because of the time required for such a study however, it cannot include non-profit entities in the self-guarantee program established by this rulemaking. The NRC will review the situation relative to universities after its planned rulemaking on fee recovery.

Requiring Additional Written Commitment by Self-Guarantors

One commenter recommended adding a requirement that self-guarantors execute a binding commitment to make the necessary funds available for decommissioning. Under this recommendation, in addition to submitting proof of the required financial strength, the self-guarantor would also have to submit a written agreement that, upon issuance of an order by the Commission to undertake decommissioning, the licensee will set up a trust fund in favor of the Commission, or obtain other surety accessible to the Commission.

Response: The addition of a written commitment is a useful suggestion. A provision is being included in the self-guarantee requirements calling for the licensee to provide the Commission with a written guarantee (a written commitment by a corporate officer) stating that the licensee will fund and carry out the required decommissioning activities, or, upon issuance of an order by the Commission, it will set up and fund a standby trust with sufficient funds to carry out the required decommissioning activities based on the current cost estimates.

Changes From the Proposed Rule

There are only three changes from the proposed rule. First, the specific \$1 billion tangible net worth criterion has been deleted from the financial criteria required for a non-electric utility licensee to use self-guarantee. The

² Corporate Bond Defaults and Default Rates, Moody's Special Report, January 1991, p. 32.

financial criteria included in the final rule are:

(1) Tangible net worth at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

(2) Assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

(3) A current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P), or Aaa, Aa, or A as issued by Moodys.

As used by the ratings agencies, an A rating marks a discrete point on the ratings scale, different from A-. An A- or lower rating would not be acceptable.

The second change is the addition of the requirement for the licensee to provide the Commission with a written guarantee.

The third change is that additional language has been added to Appendix B to clarify procedural requirements for notification of the Commission and provision of alternate financial assurance if a licensee no longer meets the requirements for self-guarantee.

Agreement State Compatibility

Section 72.30 is assigned Division 4 compatibility, since regulation of independent storage of spent nuclear fuel and high-level radioactive waste are functions reserved to the NRC pursuant to the Atomic Energy Act.

Sections 30.35, 40.36, and 70.25 are currently considered Division 2 compatibility. The addition of the self-guarantee mechanism for providing the required financial guarantee does not change the division of compatibility. Division 2 compatibility allows the Agreement States flexibility to be more stringent. The agreement States must provide mechanisms in their regulations, but due to the specific State financial regulations, certain mechanisms may not be acceptable in their States. Limiting the mechanisms to a subset of those provided for in the NRC regulations is within the flexibility provided in Division 2 compatibility.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action

described as a categorical exclusion in 10 CFR 51.22(c)(10)(i). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*). These requirements have been approved by the Office of Management and Budget, approval numbers: 3150-0017, -0020, and -0009.

The public reporting burden for this collection of information is estimated to average 19 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 Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150-0017, -0020, and -0009), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Clark W. Prichard, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC, 20555 telephone (301) 492-3734.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. The licensees affected by this rule do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards of the NRC applicable to a small business (56 FR 56671; November 6, 1991).

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule and, therefore, that a backfit analysis is not required for this rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalty, Government contracts, Intergovernmental relations, Isotopes, Nuclear material, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalty, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalty, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Penalty, 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 30, 40, 50, 70, and 72.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. 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).

2. In § 30.8 paragraph (b) is revised to read as follows:

§ 30.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 30.9, 30.11, 30.15, 30.19, 30.20, 30.32, 30.34, 30.35, 30.36, 30.37, 30.38, 30.50, 30.51, 30.55, 30.56, and appendix A and B to this part.

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3. In § 30.35, the introductory text of paragraph (f)(2) is revised to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) * * *

(1) * * *

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A of this part. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix B of this part. A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

4. A new appendix B is added to part 30 to read as follows:

Appendix B to Part 30—Criteria Relating to Use of Financial Tests and Self Guarantees for Providing Reasonable Assurance of Funds for Decommissioning

I. Introduction

An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes the financial test of Section II of this appendix. The terms of the self-guarantee are in Section III of this appendix. This appendix establishes criteria for passing the financial test for the self guarantee and establishes the terms for a self-guarantee.

II. Financial Test

A. To pass the financial test, a company must meet all of the following criteria:

(1) Tangible net worth at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

(2) Assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

(3) A current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P), or Aaa, Aa, or A as issued by Moodys.

B. To pass the financial test, a company must meet all of the following additional requirements:

(1) The company must have at least one class of equity securities registered under the Securities Exchange Act of 1934.

(2) The company's independent certified public accountant must have compared the data used by the company in the financial test which is derived from the independently audited, yearend financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform NRC within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(3) After the initial financial test, the company must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

C. If the licensee no longer meets the requirements of Section II.A. of this appendix, the licensee must send immediate notice to the Commission of its intent to establish alternate financial assurance as specified in the Commission's regulations within 120 days of such notice.

III. Company Self-Guarantee

The terms of a self-guarantee which an applicant or licensee furnishes must provide that:

A. The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the Commission. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the Commission, as evidenced by the return receipt.

B. The licensee shall provide alternative financial assurance as specified in the Commission's regulations within 90 days following receipt by the Commission of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the Commission has terminated the license or until another financial assurance method acceptable to the Commission has been put in effect by the licensee.

D. The licensee will promptly forward to the Commission and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of section 13 of the Securities and Exchange Act of 1934.

E. If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poors or Moodys, the licensee will provide notice in writing of such fact to the Commission within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poors and Moodys, the licensee no longer meets the requirements of Section II.A. of this appendix.

F. The applicant or licensee must provide to the Commission a written guarantee (a written commitment by a corporate officer) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Commission, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

5. 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).

6. In § 40.8 paragraph (b) is revised to read as follows:

§ 40.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 40.25, 40.26, 40.31, 40.35, 40.36, 40.42, 40.43, 40.44, 40.60, 40.61, 40.64, 40.65, and appendix A to this part.

* * * * *

7. In § 40.36 the introductory text of paragraph (e)(2) is revised to read as follows:

§ 40.36 Financial assurance and recordkeeping for decommissioning.

* * * * *

(e) * * *

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A of 10 CFR part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix B of 10 CFR part 30. A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A of 10 CFR part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

8. 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. 936, 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 50.76 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). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

9. In § 50.8 paragraph (b) is revised to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in § 50.30, 50.33, 50.33a, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.63, 50.64, 50.65, 50.71, 50.72, 50.75, 50.80, 50.82, 50.90, 50.91, and appendices A, B, E, G, H, I, J, K, M, N, O, Q, and R to this part.

10. In § 50.75 the introductory text of paragraph (e)(1)(iii) and paragraph (e)(2)(iii) are revised to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(e) * * *

(1) * * *

(iii) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

(2) * * *

(iii) A surety method, insurance, or other guarantee method. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A of 10 CFR part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of

this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix B of 10 CFR part 30. A guarantee by the applicant or the licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

11. 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).

12. In § 70.25, the introductory text of paragraph (f)(2) is revised to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) * * *

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A of 10 CFR part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix B of 10 CFR part 30. A

guarantee by the applicant or the licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

13. 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).

15. In § 72.30 the introductory text of paragraph (c)(2) is revised to read as follows:

§ 72.30 Decommissioning planning including financing and recordkeeping.

* * * * *

(c) * * *

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a

financial test may be used if the guarantee and test are as contained in appendix A of 10 CFR part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix B of 10 CFR part 30. A guarantee by the applicant or the licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

Dated at Rockville, MD, this 2d day of December 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93-31767 Filed 12-28-93; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF ENERGY

10 CFR Part 780

Patent Compensation Board Regulations

AGENCY: Department of Energy (DOE).

ACTION: Final Rulemaking.

SUMMARY: Today's rule amends the Department's Patent Compensation Board regulations to comply with the North American Free Trade Agreement, commonly referred to as "NAFTA," and its implementing legislation. These regulations are amended in response to the Statement of Administrative Action on NAFTA that was submitted to Congress under section 1103 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2903) where the Administration expressed its intent to amend regulations as required to implement U.S. obligations under the agreement at the time NAFTA enters into force. House Document 103-159, vol. 1.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Sue Hagarman, Office of the Assistant General Counsel for Intellectual Property (GC-42), U.S. Department of Energy, Washington, DC 20585, (202) 586-3499.

SUPPLEMENTARY INFORMATION:

I. Background.

A. Discussion.

II. Procedural Requirements.

A. Review Under Executive Order 12866.

B. Review Under Executive Order 12778.

C. Review Under the Regulatory Flexibility Act.

D. Review Under the Paperwork Reduction Act.

E. Review Under Executive Order 12612.

F. Review Under the National Environmental Policy Act.

G. General.

I. Background

A. Discussion

The effect of Article 1709(10) of NAFTA is to limit the extent to which a government that is a party to NAFTA may allow the use of a patent without the patent owner's permission, i.e., compulsorily license a patent.

Section 104(b) of the North American Free Trade Agreement Implementation Act (Act), Pub. L. 103-182, provides that appropriate officers of the United States may issue necessary regulations to ensure that a provision of NAFTA, such as Article 1709(10), is fully effective on the date that NAFTA enters into force, subject to the restriction that the effective date of such regulations is no earlier than the date of entry into force. Section 101(b) of the Act authorizes the President to exchange notes with the Government of Canada or Mexico, providing for entry into force, on or after January 1, 1994. On page 14 of the Statement of Administrative Action on NAFTA that was submitted to Congress under section 1103 of Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2903), there is an expression of the Administration's intent to amend regulations as required to implement U.S. obligations under the agreement at the time NAFTA enters into force. House Document 103-159, vol. 1.

Section 153 of the Atomic Energy Act authorizes the Department of Energy (DOE) to issue compulsory licenses under certain conditions, 42 U.S.C. 2183. The DOE regulations (10 CFR part 780), which implement section 153, set forth the procedures to be followed when compulsorily licensing a patent. The DOE regulations include the requirements of paragraphs (a) and (i)-(l) of Article 1709(10), 10 CFR 780.10 and 780.30. However, all of the requirements of each of paragraphs (b)-(h) of Article 1709(10) are not so included.

Article 1709(10) of NAFTA reads as follows:

Where the law of a Party allows for use of the subject matter of a patent, other than that

use allowed under paragraph 6, without the authorization of the right holder, including use by the government or other persons authorized by the government, the Party shall respect the following provisions:

(a) Authorization of such use shall be considered on its individual merits;

(b) Such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and such efforts have not been successful within a reasonable period of time. The requirement to make such efforts may be waived by a Party in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;

(c) The scope and duration of such use shall be limited to the purpose for which it was authorized;

(d) Such use shall be non-exclusive;

(e) Such use shall be non-assignable, except with that part of the enterprise or goodwill that enjoys such use;

(f) Any such use shall be authorized predominantly for the supply of the Party's domestic market;

(g) Authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances that led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, on motivated request, the continued existence of these circumstances;

(h) The right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;

(i) The legal validity of any decision relating to the authorization shall be subject to judicial or other independent review by a distinct higher authority;

(j) Any decision relating to the remuneration provided in respect of such use shall be subject to judicial or other independent review by a distinct higher authority;

(k) The Party shall not be obliged to apply the conditions set out in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions that led to such authorization are likely to recur;

(l) The Party shall not authorize the use of the subject matter of a patent to permit the exploitation of another patent except as a

remedy for an adjudicated violation of domestic laws regarding anti-competitive practices.

Paragraphs (b)–(h) of Article 1709(10) are not inconsistent with any of the specific requirements of section 153. Furthermore, the provisions of paragraphs (b)–(h) are either very specific or capable of implementation on a case-by-case basis. Accordingly, the regulations at 10 CFR part 780 can be conformed to paragraphs (b)–(h) by issuing final interpretive regulatory amendments that closely follow the language of those paragraphs.

Consistent with DOE's obligations and authority under NAFTA, the implementing Act, and the Atomic Energy Act, and pursuant to the above-described expression of intent in the Statement of Administrative Action which accompanied NAFTA, DOE is today amending 10 CFR part 780 to incorporate the requirements of paragraphs (b)–(h) of Article 1709(10) of NAFTA. The requirements of paragraph (b) are repeated in the amendments to 10 CFR 780.34(b) and 780.45(d). The requirements of paragraphs (c)–(g) are repeated in the amendments to 10 CFR 780.36 and 780.47. The requirements of paragraph (h) are reflected in the amendment of 10 CFR 780.53. In compliance with the above-described restriction in section 104(b) of the implementing Act regarding the "effective date," and consistent with the Administrative Procedure Act, 5 U.S.C. 553(d)(2), today's regulatory amendments take effect on January 1, 1994.

II. Procedural Requirements

A. Review Under Executive Order 12866

It has been determined that today's regulatory action is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that executive order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification

and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. This final rule will have no preemptive effect; will not have any effect on existing Federal laws; and will only clarify the existing regulations on this subject. The revised regulations will apply only to compulsory licenses granted after the effective date of this rule, January 1, 1994, and, thus, will have no retroactive effect. Therefore, DOE certifies that this final rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

This rule will require only an insignificant addition to the data collection required for the Standard Forms 294 and 295. Accordingly, no OMB clearance is required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, and in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's final rule will only add detail to certain policy and procedural requirements. However, DOE has determined that none of the revisions

will have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under the National Environmental Policy Act

The DOE has determined that this rule is covered under the Categorical Exclusions codified at 10 CFR part 1021 that apply to rulemakings that are strictly procedural or to the amendment of existing regulation that does not change the environmental effect of the regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

G. General

The DOE has not provided for a public comment period because today's regulatory amendments are an interpretative rule which is exempt from the requirement to propose rules for public comment under the Administrative Procedure Act, 5 U.S.C. 553.

Ordinarily, final rules take effect 30 days from the date of publication. However, today's regulatory amendments take effect on January 1, 1994, pursuant to section 104(a) of the implementing Act for NAFTA and the exception from the 30-day effective date requirement in 5 U.S.C. 553(d)(2).

List of Subjects in 10 CFR Part 780

Inventions, Patents, Licenses and Patent Compensation Board.

Issued in Washington, DC, on December 23, 1993.

Eric Fygi,

Acting General Counsel.

For the reasons stated in the preamble, DOE hereby amends 10 CFR part 780 as follows:

PART 780—PATENT COMPENSATION BOARD REGULATIONS

1. The citation for authority for part 780 is revised as follows:

Authority: 42 U.S.C. 7151, 7254; 42 U.S.C. 5814, 5815; 42 U.S.C. 2183, 2187, 2223; 35 U.S.C. 183; North American Free Trade Agreement, Article 1709(10), as implemented by the North American Free Trade Agreement Implementing Act, Pub. L. 103-182.

2. Section 780.34 is amended by revising paragraph (b) to read as follows:

§ 780.34 Criteria for decision to issue a license.

* * * * *

(b) The applicant has made efforts to obtain reasonable commercial terms and conditions and such efforts have not been successful within a reasonable

period of time. The requirement to make such efforts may be waived by the Board in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. Where this requirement is waived due to national emergency or other circumstances of extreme urgency, the owner of the patent shall be notified as soon as reasonably practicable. Where this requirement is waived for a public non-commercial use, the owner of the patent shall be notified promptly.

3. Section 780.36 is revised to read as follows:

§ 780.36 Conditions and issuance of license.

(a) Upon receipt of the Board's decision and instruction to issue a patent license, the General Counsel shall issue a license which complies with the following:

(1) The scope and durations of such use shall be limited to the purpose for which it was authorized;

(2) Such use shall be non-exclusive;

(3) Such use shall be non-assignable, except with that part of the enterprise or goodwill that enjoys such use;

(4) Any such use shall be authorized predominantly for the supply of the U.S. market; and,

(5) Authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances that led to it cease to exist and are unlikely to recur.

(b) The Board shall have the authority to review, on motivated request, the continued existence of these circumstances. The parties will propose and agree on a reasonable royalty fee within a reasonable time as determined by the General Counsel. A reasonable royalty shall provide adequate remuneration for the circumstances of each case, taking into account the economic value of the authorization. If a party does not agree with the terms and conditions of the license as determined by the General Counsel or if a royalty fee cannot be agreed upon within the reasonable time period established by the General Counsel, any party may, within 30 days after the expiration of such time period, initiate a proceeding before the Board, in accordance with subpart E of this part, for a reconsideration of the General Counsel's determination. After the proceeding under subpart E of this part is completed, the General Counsel shall modify the patent license in accordance with the Board's determination.

4. Section 780.45 is amended by revising paragraph (d) to read as follows:

§ 780.45 Criteria for decision to issue a license.

* * * * *

(d) The applicant has made efforts to obtain reasonable commercial terms and conditions and such efforts have not been successful within a reasonable period of time. The requirement to make such efforts may be waived by the Board in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. Where this requirement is waived due to national emergency or other circumstances of extreme urgency, the owner of the patent shall be notified as soon as reasonably practicable. Where this requirement is waived for a public non-commercial use, the owner of the patent shall be notified promptly.

* * * * *

5. Section 780.47 is revised to read as follows:

§ 780.47 Condition and issuance of license.

(a) Upon receipt of the Board's decision and instruction to issue a patent license, the General Counsel shall issue a license which complies with the following:

(1) The scope and durations of such use shall be limited to the purpose for which it was authorized;

(2) Such use shall be non-exclusive;

(3) Such use shall be non-assignable, except with that part of the enterprise or goodwill that enjoys such use;

(4) Any such use shall be authorized predominantly for the supply of the U.S. market; and,

(5) Authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances that led to it cease to exist and are unlikely to recur.

(b) The Board shall have the authority to review, on motivated request, the continued existence of these circumstances. The parties will propose and agree on a reasonable royalty fee within a reasonable time as determined by the General Counsel. A reasonable royalty shall provide adequate remuneration for the circumstances of each case, taking into account the economic value of the authorization. If a party does not agree with the terms and conditions of the license as determined by the General Counsel or if a royalty fee cannot be agreed upon within the reasonable time period established by the General Counsel, any party may, within 30 days after the expiration of such time period, initiate a proceeding before the Board, in accordance with subpart E of this part, for a reconsideration of the General

Counsel's determination. After the proceeding under subpart E of this part is completed, the General Counsel shall modify the patent license in accordance with the Board's determination.

6. Section 780.53 is amended by redesignating paragraphs (a)(1)-(a)(4) as (a)(2)-(a)(5) and adding a new paragraph (a)(1) to read as follows:

§ 780.53 Criteria for decisions for royalties, awards and compensation.

(a) * * *

(1) The economic value of the compulsory license and the Board shall strive to provide adequate remuneration for the circumstances of each case.

* * * * *

[FR Doc. 93-31836 Filed 12-28-93; 8:45 am]

BILLING CODE 6450-01-P

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R-0782]

Equal Credit Opportunity; Appraisals and Enforcement; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule (Docket No. R-0782) which was published Thursday, December 16, 1993 (58 FR 65657). The amendments to Regulation B concerned providing credit applicants with a right to receive copies of appraisal reports.

EFFECTIVE DATE: December 29, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Bylsma, Senior Attorney, or Jane Ahrens, Jane Gell or Mary Jane Seebach, Staff Attorneys (202/452-3667), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

In the issue of December 16, 1993, on page 65657, in the third column, second paragraph, five lines down from the top of the paragraph, the date "June 6, 1994" is corrected to read "June 14, 1994".

Board of Governors of the Federal Reserve System, December 22, 1993.

William W Wiles,

Secretary of the Board.

[FR Doc. 93-31779 Filed 12-28-93; 8:45 am]

BILLING CODE 6210-01-F

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R-0756]

Capital; Capital Adequacy Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System is amending its risk-based capital guidelines for state member banks and bank holding companies. This final rule implements section 618(b) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 and section 305(b)(1)(B) of the Federal Deposit Insurance Corporation Improvement Act of 1991. The effect of the final rule will be to permit state member banks and bank holding companies to lower from 100 percent to 50 percent the risk weight assigned to certain multifamily housing loans.

EFFECTIVE DATE: This final rule is effective as of December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Rhoger H. Pugh, Assistant Director (202/728-5883), Norah M. Barger, Manager (202/452-2402), Robert E. Motyka, Supervisory Financial Analyst (202/452-3621), or Barbara J. Bouchard, Senior Financial Analyst (202/452-3072), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve, 20th & C Street NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 1992, the Federal Reserve Board (Board) issued for public comment a proposal to amend its risk-based capital guidelines that would lower the risk weight from 100 percent to 50 percent for certain multifamily housing loans meeting specified criteria. This proposal was made to satisfy the requirements of section 618(b) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRIA). In addition, this proposal would implement section 305(b)(1)(B) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) which requires the Federal banking agencies to revise their risk-based

¹ The three other Federal banking agencies have also issued for public comment similar proposals to

capital guidelines to reflect the actual performance and expected risk of loss of multifamily housing loans.

Section 618(b) of RTCRIA mandates that a 50 percent risk weight be accorded to loans for multifamily housing meeting certain criteria. These statutory criteria were incorporated into the Board's proposal and include the following:

- (1) The loan is secured by a first lien;
- (2) The ratio of the principal obligation to the appraised value of the property, that is, the loan-to-value (LTV) ratio does not exceed 80 percent (75 percent if the loan is based on a floating interest rate);
- (3) The annual net operating income generated by the property (before debt service) is not less than 120 percent of the annual debt service on the loan (115 percent if the loan is based on a floating interest rate);
- (4) Amortization of principal and interest is over a period of not more than 30 years and the minimum maturity for repayment of principal is not less than 7 years; and
- (5) All principal and interest payments have been made on the loan on time for a period of not less than one year prior to placement in the 50 percent risk category.

Section 618(b) also provides that the appropriate Federal banking agencies may establish additional criteria that a multifamily housing loan must meet before being accorded a 50 percent risk weight. In this regard, and in agreement with the other Federal banking agencies, the Board's proposed amendment set forth the following four additional criteria to ensure that only those multifamily housing loans that expose an institution to minimal levels of credit risk would receive a 50 percent risk weight:

- (1) The loan-to-value ratio used for the purpose of the statutory criterion cited above is based upon the most current appraised value of the property (which normally would be the appraised value at the time the loan was originated, unless a more recent evaluation or appraisal has been performed);
- (2) The loan is performing in accordance with its original terms and is not more than 90 days past due or carried in nonaccrual status;
- (3) The average annual occupancy for the property securing the loan has been

lower the risk weight for multifamily housing loans meeting the specified criteria. The Office of Thrift Supervision (OTS) currently permits certain multifamily loans to be included in the 50 percent risk weight category. The proposal issued by the OTS would modify its existing criteria for such loans to qualify for a 50 percent risk weight.

at least 80 percent for the preceding year; and

(4) The loan has been made in accordance with prudent underwriting standards.

The existing risk-based capital guidelines provide that loans secured by mortgages on 1- to 4-family residential properties must meet the first, second, and fourth additional criteria in order to be assigned a 50 percent risk weight. The third proposed criterion is a requirement under the OTS guidelines for loans for multifamily housing accorded a 50 percent risk weight.

Under the proposed revision to the risk-based capital guidelines, privately-issued securities backed by multifamily housing loans that meet the above cited criteria at the time the securities are originated would also qualify for inclusion in the 50 percent risk category provided that the structure of the security meets certain technical criteria set forth in the guidelines. This treatment would parallel the treatment for privately-issued securities backed by loans for 1- to 4-family residential properties under the risk-based capital guidelines. Application of this treatment to a security backed by multifamily housing loans means that the security would not qualify for inclusion in the 50 percent risk category unless all the underlying mortgages have been outstanding and performing for at least one year prior to origination of the security.

Section 618(b)(2) of RTCRRIA requires the agencies to amend their capital regulations and guidelines to provide that any loan fully secured by a first lien on a multifamily housing property that is sold subject to a pro rata loss sharing arrangement should be treated as sold to the extent that loss is incurred by the purchaser of the loan. Section 618(b)(3) of RTCRRIA directs the agencies to take into account other loss sharing arrangements, in connection with the sale of any loan that is fully secured by a first lien on multifamily housing property, to determine the extent to which such loans should be treated as sold.

The Board's existing guidelines set forth guidance on the treatment of assets sold with recourse, including those sold subject to loss sharing arrangements.

The risk-based capital guidelines for state member banks state that the risk-based capital definition of the sale of assets with recourse, including assets sold subject to loss sharing arrangements, is the same as the definition contained in the instructions to the commercial bank Consolidated Reports of Condition and Income (Call Report) glossary entry for "sales of

assets." Those instructions set out conditions that must be met in order for a bank to treat a sale of assets as a true sale and, thus, to remove from its balance sheet assets it has sold. Assets that have been sold and removed from a bank's balance sheet in accordance with the Call Report instructions are excluded from the calculation of risk-weighted assets.

Specifically with regard to the sale of assets, the Call Report instructions provide:

if the risk retained by the seller is limited to some fixed percentage of any losses that might be incurred and there are no other provisions resulting in retention of risk, either directly or indirectly, by the seller, the maximum amount of possible loss for which the selling bank is at risk (the stated percentage times the sale proceeds) shall be reported as a borrowing and the remaining amount of the assets transferred reported as a sale.

This treatment, which applies to sales of multifamily housing loans subject to pro rata loss sharing arrangements, is consistent with the language of section 618(b)(2) of RTCRRIA.

The Call Report instructions also provide that other transfers of assets, including the sale of assets subject to other loss sharing arrangements, generally are reported as sales only if the selling institution:

(1) Retains no risk of loss from assets transferred resulting from any cause, and

(2) Has no obligation to any party for the payment of principal or interest on the assets transferred resulting from any cause. This treatment, which applies to sales of multifamily housing loans subject to other loss sharing arrangements, is consistent with the language of section 618(b)(3) of RTCRRIA.

Bank holding companies generally file their regulatory reports in accordance with generally accepted accounting principles (GAAP). Under GAAP, bank holding companies are permitted to treat some asset sales with recourse, including those sold subject to loss sharing arrangements, as "true" sales and, thus, may remove the assets from the balance sheet. The risk-based capital guidelines for bank holding companies state that where such transactions have been removed from the balance sheet but meet the definition of assets sold with recourse contained in the instructions to the Call Report, the assets sold must be included in the calculation of risk-weighted assets. For this purpose the assets that are sold are treated as an off-balance sheet exposure

and are converted at 100 percent to a credit equivalent amount and assigned to the appropriate risk weight. This existing treatment, which applies to sales of multifamily housing loans subject to pro rata and other loss sharing arrangements, is consistent with the requirements of RTCRRIA sections 618(b) (2) and (3).

Comments Received

Public comments were received from twenty-three respondents: ten banking organizations, three savings institutions, nine trade associations, and one law firm. Of the twenty-three commenters, eighteen favored lowering the risk weight for qualifying multifamily mortgages from 100 percent to 50 percent; one opposed the lower risk weight; and four gave no overall opinion on the proposal. Commenters responding favorably to the proposal generally agreed that, although loans for multifamily residential properties could be riskier than loans for 1- to 4-family properties, the combination of the criteria required by section 618(b) of RTCRRIA and the additional criteria proposed by the Board should assure that only high quality multifamily housing loans would be included in the 50 percent risk weight category. The one commenter that did not support the proposal expressed the view that certain multifamily loans should stay in the 100 percent risk category because of the historically higher charge-off rates associated with these assets.

Several commenters requested clarification as to whether the qualifying criteria would be applied only once at the time of loan origination or on a continuous basis. Three respondents addressed the application of the annual net operating income-to-debt service ratio as applied to loans to finance multifamily buildings owned by cooperative housing corporations. They noted that since this type of property is generally operated as a not-for-profit enterprise, it would not meet the proposed annual net operating income-to-debt service coverage standard and thus, loans to finance acquisition of such properties could not qualify for the 50 percent risk weight category. Two commenters discussed the treatment of securities backed by multifamily housing loans. One of these commenters expressed the view that the requirement that a multifamily housing loan must perform in accordance with its terms for at least one year before it could qualify for a 50 percent risk weight would prevent securitization of multifamily loans at origination. This commenter also noted that it would be difficult to monitor each underlying loan in a

security for continuous compliance with the qualifying criteria.

Final Rule

After review of the public comments, and in agreement with the other Federal banking agencies, the Board is adopting a final rule amending the risk-based capital guidelines to lower the risk weight from 100 percent to 50 percent for loans secured by mortgages on multifamily residential properties meeting certain conditions as well as for securities backed by such qualifying mortgages. This final rule implements section 618(b) of RTCRIA and section 305(b)(1)(B) of FDICIA. The criteria a multifamily housing loan must meet to be included in the 50 percent risk category are the same as those proposed, except that the 80 percent average annual occupancy requirement has been eliminated and clarification has been made with regard to other criteria.

Following consultations with the other agencies, the Board has decided to eliminate the requirement that the property financed must have maintained an average annual occupancy rate of at least 80 percent for the previous year. Comments received by the other agencies indicated that the additional safeguards this occupancy criterion might provide would be minimal in comparison to the increased record-keeping burden it would create. The Board believes that the remaining criteria should be sufficient to satisfy concerns related to safety and soundness of loans secured by multifamily residential property that are assigned a 50 percent risk weight.

Several commenters noted that certain cooperative properties and other not-for-profit multifamily residential properties may not be able to generate sufficient cash flow to satisfy the annual net operating income-to-debt service ratio required in the qualifying criteria. In light of these comments, the final rule specifies that cooperative and other not-for-profit multifamily residential properties may be deemed to satisfy the annual net operating income-to-debt service ratio requirement if they generate sufficient cash flow to provide comparable protection to the institution. Sufficient cash flow to provide comparable protection may be generated in a variety of ways, for example, through additions to special operating reserve accounts or special subsidies provided by Federal, state, local, or private sources. This comparable protection accommodation could allow low- and moderate-income not-for-profit multifamily housing projects to qualify for the 50 percent risk category,

provided that they meet the other criteria.

The Board notes that the annual debt service ratio requirements must be satisfied on an on-going basis for a multifamily housing loan to continue to receive a 50 percent risk weight.

In addition, the final rule states that for purposes of satisfying the one year's timely performance criterion in the case where the existing owner of a multifamily residential property is refinancing a loan on that property, all principal and interest payments on the loan being refinanced must have been made on a timely basis in accordance with the terms of the loan for at least the preceding year.

The existing risk-based capital guidelines specify that prudent underwriting standards include a conservative loan-to-value ratio, and the proposed rule stated that, in the case of a loan secured by multifamily residential property, the loan-to-value ratio would not be deemed conservative if it exceeded 80 percent (75 percent if the loan is based on a floating interest rate). The final rule notes that prudent underwriting standards dictate that a loan-to-value ratio used in the case of a loan to acquire a property would not be deemed conservative unless the value is based on the lower of the purchase price of the property or the value as determined by the most current appraisal or, if appropriate, the most current evaluation. Otherwise, the loan-to-value ratio generally would be based upon the value of the property as determined by the most current appraisal or, if appropriate, the most current evaluation. Subsequent appraisals (or evaluations) of a multifamily property will not be required for the purpose of continuing to include the loan secured by such property in the 50 percent risk category. However, if a subsequent appraisal (or evaluation) is obtained and it indicates that the loan-to-value ratio exceeds the statutory requirements, the loan would have to be reassigned to the 100 percent risk category.

In connection with the loan-to-value ratio criterion, the Board also notes that under the agencies' 1992 real estate lending standards regulations and guidelines, as a general matter, institutions may extend loans to improved property, which includes existing multifamily residential property, with loan-to-value ratios of up to 85 percent. These guidelines, which implement section 304 of FDICIA, became effective on March 19, 1993. While these guidelines permit institutions to make loans secured by existing multifamily property with loan-

to-value ratios that exceed 80 percent, such loans would not qualify for the 50 percent risk category. Rather, they should be assigned to the 100 percent risk category.

The final rule provides that securities backed by mortgages on multifamily residential properties may be accorded a 50 percent risk weight if each underlying mortgage satisfies all the criteria for eligibility for the 50 percent risk weight at the time the pool is originated and the structure of the security meets certain technical criteria set forth in the guidelines. This treatment parallels that accorded to securities backed by mortgages on 1- to 4-family residential properties that qualify for a 50 percent risk weight. In light of issues raised by commenters, the Board is clarifying that the final rule does not require monitoring of each loan that has been pooled into a security for continuous compliance with all the qualifying criteria. As a safeguard against deterioration in the underlying assets, however, the final rule stipulates that a security backed by multifamily mortgage loans may be accorded a 50 percent risk weight only as long as principal and interest payments on the security are not more than 30 days past due.

Finally, in order to conform the Board's regulatory language to that of the other agencies, the final rule amends the risk-based capital guidelines for state member banks by clarifying in a footnote that a multifamily housing loan that is sold subject to a pro rata loss sharing arrangement is to be treated by the selling bank as sold (and excluded from the balance sheet assets), to the extent that the sales agreement provides for the purchaser of the loan to share in any loss incurred on the loan on a pro rata basis with the selling bank. This means that, in such a transaction, the portion of the loan that is treated as sold by the selling bank is excluded from the calculation of the risk-based capital ratio.

With regard to bank holding companies, a footnote in the final rule clarifies that multifamily housing loans sold subject to such pro rata loss sharing arrangements, may be treated as sold, for risk-based capital purposes, to the same extent as for banks. The portion that is sold would not be subject to the 100 percent conversion factor normally applied to assets sold with recourse but rather would be excluded from the calculation of the risk-based capital ratio.

The clarifying footnotes also provide guidance on the risk-based capital treatment of sales of multifamily housing loans in which the purchaser of

a loan shares in any loss incurred on the loan with the selling institution on other than a pro rata basis. These other loss sharing arrangements are taken into account, for purposes of determining the extent to which such loans are treated by the selling banking organization as sold for risk-based capital purposes, and excluded from a bank's balance sheet assets or the credit equivalent amount of a bank holding company's off-balance sheet items, in the same manner as prescribed in the instructions to the Call Report. As noted earlier, these footnotes reflect the existing Call Report and risk-based capital treatment with respect to such assets sold subject to loss sharing arrangements.

In addition, the Board notes that the Board and the other banking agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), have been working together to develop revisions to the agencies' risk-based capital standards that will better distinguish between the degrees of risk in loss sharing arrangements involving asset sales in general. In this regard, on December 16, 1993, the Board approved a recommendation from the Federal Financial Institution Examination Council to seek public comment on a Notice of Proposed Rulemaking and an Advanced Notice of Proposed Rulemaking concerning the regulatory treatment of assets sold subject to loss sharing arrangements. To the extent these proposals apply to multifamily housing loans, they would, if adopted, also satisfy the requirements of section 618(b)(3) of RTCRRIA.

Finally, the Board finds, for good cause, that an immediate effective date is necessary in order to serve the public interest, avoid confusion, and expedite the reporting of a capital charge that is commensurate with the risks associated with multifamily housing loans that meet the specified criteria. A December 31, 1993 effective date will enable banking organizations to use the reduced risk weight for multifamily housing loans in their end-of-year regulatory reports. In addition, the Board believes this effective date is appropriate because the revision would reduce, rather than expand, regulatory burden.

Regulatory Flexibility Act Analysis

The Federal Reserve Board does not believe adoption of this final rule would have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations), in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In

this regard, the final rule would reduce certain regulatory burdens on bank holding companies as it would reduce the capital charge on certain transactions. In addition, because the risk-based capital guidelines generally do not apply to bank holding companies with consolidated assets of less than \$150 million, this proposal will not affect such companies.

List of Subjects

12 CFR Part 208

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

12 CFR Part 225

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

For the reasons set forth in the preamble the Board is amending 12 CFR parts 208 and 225 to read as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

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

Authority: 12 U.S.C. 36, 248(a) and (c), 321–338, 461, 481–486, 601, 611, 1814, 1823(j), 1831o, 1831p–1, 3906–3909, 3310, 3331–3351; 15 U.S.C. 78b, 78o–4(c)(5), 78q, 78q–1, 78w, 781(b), 781(i), and 1781(g).

2. Appendix A to part 208 is amended by revising the first paragraph of section III.C.3., and Category 3 Item 1. of Attachment III to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

III. Procedures for Computing Weighted Risk Assets and Off-Balance Sheet Items

* * * * *

C. Risk Weights

* * * * *

3. **Category 3: 50 percent.** This category includes loans fully secured by first liens³⁴ on 1- to 4-family residential properties, either owner-occupied or rented, or on multifamily residential properties,³⁵ that meet certain

³⁴If a bank holds the first and junior liens(s) on a residential property and no other party holds an intervening lien, the transaction is treated as a single loan secured by a first lien for the purpose of determining the loan-to-value ratio.

³⁵Loans that qualify as loans secured by 1- to 4-family residential properties or multifamily residential properties are listed in the instructions to the commercial bank Call Report. In addition, for risk-based capital purposes, loans secured by 1- to 4-family residential properties include loans to

builders with substantial project equity for the construction of 1- to 4-family residences that have been presold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgage loans and have made substantial earnest money deposits. The instructions to the Call Report also discuss the treatment of loans, including multifamily housing loans, that are sold subject to a pro rata loss sharing arrangement. Such an arrangement should be treated by the selling bank as sold (and excluded from balance sheet assets) to the extent that the sales agreement provides for the purchaser of the loan to share in any loss incurred on the loan on a pro rata basis with the selling bank. In such a transaction, from the standpoint of the selling bank, the portion of the loan that is treated as sold is not subject to the risk-based capital standards. In connection with sales of multifamily housing loans in which the purchaser of a loan shares in any loss incurred on the loan with the selling institution on other than a pro rata basis, these other loss sharing arrangements are taken into account for purposes of determining the extent to which such loans are treated by the selling bank as sold (and excluded from balance sheet assets) under the risk-based capital framework in the same manner as prescribed for reporting purposes in the instructions to the Call Report.

³⁶Residential property loans that do not meet all the specified criteria or that are made for the purpose of speculative property development are placed in the 100 percent risk category.

³⁷Prudent underwriting standards include a conservative ratio of the current loan balance to the value of the property. In the case of a loan secured by multifamily residential property, the loan-to-value ratio is not conservative if it exceeds 80 percent (75 percent if the loan is based on a floating interest rate). Prudent underwriting standards also dictate that a loan-to-value ratio used in the case of originating a loan to acquire a property would not be deemed conservative unless the value is based on the lower of the acquisition cost of the property or appraised (or if appropriate, evaluated) value. Otherwise, the loan-to-value ratio generally would be based upon the value of the property as determined by the most current appraisal, or if appropriate, the most current evaluation. All appraisals must be made in a manner consistent with the Federal banking agencies' real estate appraisal regulations and guidelines and with the bank's own appraisal guidelines.

³⁸Loans included in this category must have been made in accordance with prudent underwriting standards;³⁷ be performing in accordance with their original terms; and not be 90 days or more past due or carried in nonaccrual status. The following additional criteria must also be applied to a loan secured by a multifamily residential property that is included in this category: all principal and interest payments on the loan must have been made on time for at least the year preceding placement in this category, or in the case where the existing property owner is refinancing a loan on that property, all principal and interest payments on the loan being refinanced must have been made on time for at least the year preceding placement in this category; amortization of the principal and interest must occur over a period of not more than 30 years and the minimum original maturity for repayment of principal must not be less than 7 years; and the annual net operating income (before debt service) generated by the property during its most recent fiscal year must not be less than 120 percent of the loan's current annual debt service (115 percent if the loan is based on a floating interest rate) or, in the case of a

cooperative or other not-for-profit housing project, the property must generate sufficient cash flow to provide comparable protection to the institution. Also included in this category are privately-issued mortgage-backed securities provided that

- (1) The structure of the security meets the criteria described in section III(B)(3) above;
- (2) If the security is backed by a pool of conventional mortgages, on 1- to 4-family residential or multifamily residential properties each underlying mortgage meets the criteria described above in this section for eligibility for the 50 percent risk category at the time the pool is originated;
- (3) If the security is backed by privately-issued mortgage-backed securities, each underlying security qualifies for the 50 percent risk category; and
- (4) If the security is backed by a pool of multifamily residential mortgages, principal and interest payments on the security are not 30 days or more past due.

Privately-issued mortgage-backed securities that do not meet these criteria or that do not qualify for a lower risk weight are generally assigned to the 100 percent risk category.

* * * * *

Attachment III—Summary of Risk Weights and Risk Categories for State Member Banks

* * * * *

Category 3: 50 Percent

1. Loans fully secured by first liens on 1- to 4-family residential properties or on multifamily residential properties that have been made in accordance with prudent underwriting standards, that are performing in accordance with their original terms, and that are not past due or in nonaccrual status, and that meet other qualifying criteria, and certain privately-issued mortgage-backed securities representing indirect ownership of such loans. (Loans made for speculative purposes are excluded.)

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

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

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3907, 3909, 3310, and 3331-3351.

2. Appendix A to part 225 is amended by revising the first paragraph of section III.C.3., footnote 48 in section III.D.1., and Category 3 Item 1. of Attachment III to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

III. Procedures for Computing Weighted Risk Assets and Off-Balance Sheet Items

* * * * *

C. Risk Weights

* * * * *

3. **Category 3: 50 percent.** This category includes loans fully secured by first liens³⁷ on 1- to 4-family residential properties, either owner-occupied or rented, or on multifamily residential properties,³⁸ that meet certain criteria.³⁹ Loans included in this category must have been made in accordance with prudent underwriting standards;⁴⁰ be performing in accordance with their original terms; and not be 90 days or more past due or carried in nonaccrual status. The following additional criteria must also be applied to a loan secured by a multifamily residential property that is included in this category: all principal and interest payments on the loan must have been made on time for at least the year preceding placement in this category, or in the case where the existing property owner is refinancing a loan on that property, all principal and interest payments on the loan being refinanced must have been made on time for at least the year preceding placement in this category; amortization of the principal and interest must occur over a period of not more than 30 years and the minimum original maturity for repayment of principal must not be less than 7 years; and the annual net operating income (before debt service) generated by the property during its most recent fiscal year must not be less than 120 percent of the loan's current annual debt service (115 percent if the loan is based on a floating interest rate) or, in the case of a cooperative or other not-for-profit housing project, the property must generate sufficient cash flow to provide comparable protection

³⁷ If a banking organization holds the first and junior lien(s) on a residential property and no other party holds an intervening lien, the transaction is treated as a single loan secured by a first lien for the purpose of determining the loan-to-value ratio.

³⁸ Loans that qualify as loans secured by 1- to 4-family residential properties or multifamily residential properties are listed in the instructions to the FR Y-9C Report. In addition, for risk-based capital purposes, loans secured by 1- to 4-family residential properties include loans to builders with substantial project equity for the construction of 1- to 4-family residences that have been presold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgage loans and have made substantial earnest money deposits.

³⁹ Residential property loans that do not meet all the specified criteria or that are made for the purpose of speculative property development are placed in the 100 percent risk category.

⁴⁰ Prudent underwriting standards include a conservative ratio of the current loan balance to the value of the property. In the case of a loan secured by multifamily residential property, the loan-to-value ratio is not conservative if it exceeds 80 percent (75 percent if the loan is based on a floating interest rate). Prudent underwriting standards also dictate that a loan-to-value ratio used in the case of originating a loan to acquire a property would not be deemed conservative unless the value is based on the lower of the acquisition cost of the property or appraised (or if appropriate, evaluated) value. Otherwise, the loan-to-value ratio generally would be based upon the value of the property as determined by the most current appraisal, or if appropriate, the most current evaluation. All appraisals must be made in a manner consistent with the Federal banking agencies' real estate appraisal regulations and guidelines and with the banking organization's own appraisal guidelines.

to the institution. Also included in this category are privately-issued mortgage-backed securities provided that:

- (1) The structure of the security meets the criteria described in section III(B)(3) above;
- (2) If the security is backed by a pool of conventional mortgages, on 1- to 4-family residential or multifamily residential properties, each underlying mortgage meets the criteria described above in this section for eligibility for the 50 percent risk category at the time the pool is originated;
- (3) If the security is backed by privately-issued mortgage-backed securities, each underlying security qualifies for the 50 percent risk category; and
- (4) If the security is backed by a pool of multifamily residential mortgages, principal and interest payments on the security are not 30 days or more past due. Privately-issued mortgage-backed securities that do not meet these criteria or that do not qualify for a lower risk weight are generally assigned to the 100 percent risk category.

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D. Off-Balance Sheet Items

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1. * * * 48

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Attachment III—Summary of Risk Weights and Risk Categories for Bank Holding Companies

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Category 3: 50 Percent

1. Loans fully secured by first liens on 1- to 4-family residential properties or on multifamily residential properties that have been made in accordance with prudent underwriting standards, that are performing in accordance with their original terms, and that are not past due or in nonaccrual status, and that meet other qualifying criteria, and certain privately-issued mortgage-backed securities representing indirect ownership of

⁴⁸ In regulatory reports and under GAAP, bank holding companies are permitted to treat some asset sales with recourse as "true" sales. For risk-based capital purposes, however, such assets sold with recourse and reported as "true" sales by bank holding companies are converted at 100 percent and assigned to the risk category appropriate to the underlying obligor or, if relevant the guarantor or nature of the collateral, provided that the transactions meet the definition of assets sold with recourse (including assets sold subject to pro rata and other loss sharing arrangements), that is contained in the instructions to the commercial bank Consolidated Reports of Condition and Income (Call Report). This treatment applies to any assets, including the sale of 1- to 4-family and multifamily residential mortgages, sold with recourse. Accordingly, the entire amount of any assets transferred with recourse that are not already included on the balance sheet, including pools of 1- to 4-family residential mortgages, are to be converted at 100 percent and assigned to the risk category appropriate to the obligor, or if relevant, the nature of any collateral or guarantees. The only exception involves transfers of pools of residential mortgages that have been made with insignificant recourse for which a liability or specific non-capital reserve has been established and is maintained for the maximum amount of possible loss under the recourse provision.

such loans. (Loans made for speculative purposes are excluded.)

* * * * *

Board of Governors of the Federal Reserve System, December 17, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-31338 Filed 12-28-93; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-ANM-12]

Amendment of Class E Airspace; Wenatchee, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published on September 28, 1993. This final rule amended the Wenatchee, Washington, Class E airspace to provide controlled airspace extending upward from 700 feet above ground level for aircraft executing a revised instrument approach procedure at Pangborn Memorial Airport. The airspace description erroneously specified the airspace distance as 4.2 miles northeast of the VOR/DME. This distance should be a 4.3-mile radius northwest of the VOR/DME.

EFFECTIVE DATE: December 29, 1993.

FOR FURTHER INFORMATION CONTACT:

James E. Riley, ANM-537, Federal Aviation Administration, Docket No. 93-ANM-12, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2537.

SUPPLEMENTARY INFORMATION: On September 28, 1993, the Federal Aviation Administration (FAA) published a final rule that amended the Wenatchee, Washington, Class E airspace to provide controlled airspace extending upward from 700 feet above ground level for aircraft executing a revised instrument approach procedure at Pangborn Memorial Airport, Wenatchee, Washington (58 FR 50514). The airspace description erroneously specified the airspace distance at 4.2 miles northeast of the VOR/DME. This distance should be a 4.3-mile radius northwest of the VOR/DME.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the publication on September 28, 1993 (58

FR 50514), and the description in FAA Order 7400.9A, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§ 71.1 [Corrected]

On page 50515, in the second column, the description for the Wenatchee, Washington, Class E airspace is corrected by removing "4.2-mile to 13.4 miles northeast" and inserting in its place "4.3-mile radius to 13.4 miles northwest."

Issued in Seattle, Washington, on December 21, 1993.

Temple H. Johnson, Jr.

Manager, Air Traffic Division.

[FR Doc. 93-31756 Filed 12-28-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770, 773, and 785

[Docket No. 931074-3274]

Revisions to the Export Administration Regulations; Clarifications

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is amending the Export Administration Regulations (EAR), to make certain editorial clarifications and corrections and, in some cases, insert material inadvertently omitted from earlier amendments.

EFFECTIVE DATE: This rule is effective December 29, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, telephone: (202) 482-2440.

SUPPLEMENTARY INFORMATION: Specifically, this rule makes the following corrections and clarifications:

(1) For the sake of clarity, this rule provides a definition of "cooperating country" and identifies the countries currently cooperating with the Coordinating Committee for Multilateral Export Controls (COCOM) in § 770.2;

(2) Revises § 773.2(e)(2) to clarify the amendment procedures when adding (additional) Export Control Classification Numbers (ECCNs) under the Project License procedure;

(3) Revises § 773.9(a)(2) to accurately reflect eligible chemical and biological equipment under the Special Chemical License procedure; and

(4) Revises § 785.2 to clarify that Cambodia and Laos are not Coordinating Committee (COCOM) proscribed countries and applications to export or reexport commodities and technical data to these countries do not require review by COCOM.

Rulemaking Requirements

1. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), approved by the Office of Management and Budget under control numbers 0694-0005, 0694-0006, 0694-0007, and 0694-0067.

2. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is issued in final form. However, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Part 773

Exports, Reporting and recordkeeping requirements.

15 CFR Part 785

Communist countries, Exports.

Accordingly, parts 770, 773, and 785 of the Export Administration

Regulations (15 CFR parts 730-799) are amended as follows:

1. The authority citations for 15 CFR Part 770 continues to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93-153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94-163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94-258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95-372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended (extended by Pub. L. 103-10, 107 Stat. 40); sec. 125, Pub. L. 99-64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

2. The authority citations for 15 CFR parts 773 and 785 continue to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended (extended by Pub. L. 103-10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

PART 770—[AMENDED]

3. Section 770.2 is amended by adding a definition for "Cooperating country" immediately after the definition for "Controlled country", to read as follows:

§ 770.2 Definition of terms.

Controlled country. * * *
Cooperating country. A country that cooperates fully with the COCOM member countries in restricting strategic exports to controlled countries in accordance with COCOM standards. The "Cooperating Countries" are: Austria, Finland, Hong Kong, Ireland,

New Zealand, Sweden, and Switzerland.

PART 773—[AMENDED]

4. Section 773.2 is amended, as follows:

- (a) By revising paragraph (a)(1),
- (b) By redesignating paragraph (e)(2)(v) as paragraph (e)(2)(vi), and adding a new paragraph (e)(2)(v);
- (c) By removing paragraph (e)(3); and
- (d) By redesignating paragraph (e)(4) as paragraph (e)(3).

The revision and addition read as follows:

§ 773.2 Project license.

- (a) * * *
- (1) The items to be exported are covered by entries in the Commerce Control List under at least two different categories and licensed by two of the branches (for example, Categories 4 and 6, licensed by the Computer Systems Branch and the Capital Goods Branch);

- (e) * * *
- (2) * * *
- (v) *Adding an ECCN by amendment.*

A license holder must submit Form BXA-685P (Request for Amendment Action) to request the addition of an ECCN not covered by the commodity description on the approved application.

5. Section 773.9 is amended by revising paragraph (a)(2) to read as follows:

§ 773.9 Special Chemical License.

- (a) * * *
- (2) Chemical and biological equipment controlled under ECCNs 1B70E and 1B71E.

PART 785—[AMENDED]

6. Section 785.2 is amended by revising the section heading and paragraph (a)(3) to read as follows:

§ 785.2 Country Groups Q, W, and Y: Geographic area of the former U.S.S.R., Eastern Europe, Mongolian People's Republic, Cambodia, and Laos.

- (a) * * *
- (3) Applications covering certain commodities and technical data that are controlled by the United States and certain other nations that cooperate in an international export control system

¹ See Supplement No. 1 to part 770 of this subchapter for listing of Country Groups.

and are proposed for export or reexport to Country Groups Q, W, or Y (excluding Cambodia and Laos) may have to be forwarded to the Coordinating Committee (COCOM) of the international export control system for consideration in accordance with established COCOM procedures.

Dated: December 21, 1993.

Sue E. Eckert,
Assistant Secretary for Export Administration.

[FR Doc. 93-31672 Filed 12-28-93; 8:45 am]
BILLING CODE 3510-DT-P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

RIN 1515-AB29

[T.D. 94-3]

Declarations Required To Be Filed With Certain Imported Works of Art Entered Free of Duty

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

ACTION: Final rule.

SUMMARY: The Customs Regulations require that works of art entered free of duty under certain provisions of the Harmonized Tariff Schedule of the United States shall have either a declaration filed with the entry by the artist who produced the articles showing whether the articles are originals, replicas, reproductions or copies, or a declaration by the seller or shipper with the same information if the declaration by the artist is not available. This document amends 19 CFR 10.48 to make it easier for importers to satisfy the declaration requirements and to reduce the instances in which a declaration will be required.

EFFECTIVE DATE: January 28, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. King, Commercial Rulings Division, Office of Regulations and Rulings, (202-482-7020).

SUPPLEMENTARY INFORMATION:

Background

The Harmonized Tariff Schedule of the United States (HTSUS), 19 U.S.C. 1202, provides in subheadings 9701.90.00, 9702.00.00 and 9703.00.00, for the classification of various "works of art" which are entitled to duty-free entry if classified therein. Section 10.48, Customs Regulations (19 CFR 10.48), sets forth procedures to assist Customs

in making the determination whether merchandise so claimed is actually a "work of art" and thus properly classified in the above cited provisions. Section 10.48 states that Customs field personnel may require that a declaration be filed with an entry by the artist who produced the articles showing whether the articles are originals, replicas, reproductions, or copies; or a declaration by the seller or shipper with the same information if the declaration by the artist is not available. The regulation also states that, whereas the declarations of these parties may be waived upon a showing of impossibility, the declaration of the importer shall be required in all cases.

On October 7, 1992, the Customs Service published a notice in the *Federal Register* (57 FR 46112) proposing to amend § 10.48. The reason for the proposed amendment was to facilitate the movement of merchandise and save importers time and money by making it easier to provide the declaration, when one is deemed necessary by Customs, and by providing Customs with greater flexibility not to require a declaration. Another reason for the proposed amendment was to eliminate inconsistencies that exist between the regulation and the provisions of the HTSUS (and applicable interpretative notes) which the regulation was intended to help implement. The elimination of inconsistencies in this instance would have the effect of further reducing requirements placed on importers by eliminating an entire series of merchandise, i.e., merchandise classified in subheading 9701.90.00, HTSUS, from the merchandise for which Customs may require such declaration.

Analysis of Comments

No comments were received in response to the published notice of proposed rulemaking to amend § 10.48.

Conclusion

After careful review, the Customs Service has concluded that the amendments should be adopted as proposed, with one modification. Customs has eliminated the clause in the declaration in § 10.48(b) referring to mosaics because mosaics are not required to be originals to be classifiable under subheading 9701.90.00, HTSUS.

Explanation of Other Amendments

1. The section heading change is necessary because "drawings" are specifically provided for in subheading 9701.10.00, HTSUS; 19 CFR 10.48 does not apply to subheading 9701.10.00.

2. The change to § 10.48(a) is based on the fact that subheading 9701.90.00, HTSUS, is the provision in which "collages and similar decorative plaques" are classified. There is no requirement that these items be original works of art (see Explanatory Note 97.01 (B)); the declaration in the revised § 10.48(b) will not be required when an item is entered under subheading 9701.90.00.

3. The changes to § 10.48(b) are intended to accomplish two goals. First, the language is changed to make it easier for the parties involved in the importation, i.e., the importer, artist, seller and shipper, to provide a declaration, if required, by providing each of the parties with equal authority to make and provide the declaration. Secondly, the regulation is harmonized with Additional U.S. Note 1 to Chapter 97, HTSUS, and the Explanatory Notes to Chapter 97. Those interpretative notes refer to the first twelve (12) castings, replicas or reproductions as being classifiable in heading 9703 rather than the first ten (10) as presently required in the regulation.

4. Section 10.48(c) is changed to provide Customs personnel with greater flexibility to waive the requirement of a declaration.

5. The removal of paragraph (e) is necessitated by the change (in number 2, above) which removes subheading 9701.90.00 merchandise from the impact of 19 CFR 10.48.

Regulatory Flexibility Act

For the reasons set forth in the preamble and pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is hereby certified that the amendments set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information

The principal author of this document was Norman W. King, Commercial Rulings Division, Office of Regulations and Rulings. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Caribbean Basin Initiative, Customs duties and inspections, Exports,

Reporting and record keeping requirements.

Amendments to the Regulations

Part 10, Customs Regulations (19 CFR part 10), is amended as set forth below.

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

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

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

* * * * *

2. Section 10.48 and is revised to read as follows:

§ 10.48 Engravings, sculptures, etc.

(a) Invoices covering works of art claimed to be free of duty under subheadings 9702.00.00 and 9703.00.00, HTSUS, shall show whether they are originals, replicas, reproductions, or copies, and also the name of the artist who produced them, unless upon examination the Customs officer is satisfied that such statement is not necessary to a proper determination of the facts.

(b) The following evidence shall be filed in connection with the entry: A declaration in the following form by the artist who produced the article, or by the seller, shipper or importer, showing whether it is original, or in the case of sculpture, the original work or model, or one of the first twelve castings, replicas, or reproductions made from the original work or model; and in the case of etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes, that they were printed by hand from hand-etched, hand-drawn, or hand-engraved plates, stones, or blocks:

I, _____, do hereby declare that I am the producer, seller, shipper or importer of certain works of art, namely _____ covered by the annexed invoice dated _____; that any sculptures or statuary included in that invoice are the original works or models or one of the first twelve castings, replicas, or reproductions made from the sculptor's original work or model; and that any etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes included in that invoice were printed by hand from hand-etched, hand-drawn, or hand-engraved plates, stones, or blocks.

(c) The district director may waive the declaration requirement set forth in paragraph (b) of this section.

(d) Artists' proof etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes should bear the genuine signature or mark of the artist as evidence of their

authenticity. In the absence of such a signature or mark, other evidence shall be required which will establish the authenticity of the work to the satisfaction of the district director.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: December 6, 1993.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 93-31854 Filed 12-28-93; 8:45 am]

BILLING CODE 4820-02-P

19 CFR Part 175

[T.D. 94-5]

Decision Following Petition by Domestic Interested Party—Location of Country of Origin Marking for Frozen Produce Packages

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final interpretive rule.

SUMMARY: This document gives notice that Customs has made a determination pursuant to a petition filed by a domestic interested party that packages of frozen produce subject to the requirements of section 304, Tariff Act of 1930, as amended, shall show the country of origin marking on the front side of the package to be considered as marked in a conspicuous place. Further, this document sets forth specifications for such marking.

EFFECTIVE DATE: The marking requirements set forth in this decision for frozen produce articles shall become effective as to merchandise entered, or withdrawn from warehouse, for consumption, on or after February 11, 1993. However, parties adversely affected by compliance obligations shall have until May 8, 1994, to bring their frozen produce packaging into conformity with these requirements. After that date, all packaged frozen produce articles entered for consumption or withdrawn from warehouse for consumption and not marked to indicate the country of origin in accordance with this decision and other marking requirements of the Tariff Act and Customs Regulations shall be assessed marking duties.

FOR FURTHER INFORMATION CONTACT: Robert Cascardo, Value and Marking Branch, Office of Regulations and Rulings, U.S. Customs Service, (202) 482-7010.

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides

that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Failure to mark an article in accordance with the requirements of 19 U.S.C. 1304 shall result in the levy of a duty of ten percent *ad valorem*.

Part 134, Customs Regulations (19 CFR part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

Counsel for the domestic petitioners, packers of produce grown domestically, first raised the question of whether the front or the back side of a frozen produce package was a conspicuous place for country of origin marking by seeking a ruling from Customs in 1988. A ruling was requested to the effect that packaged frozen produce was not marked in a conspicuous place unless the marking appeared on the front side of such packaging in prominent lettering. Customs responded by issuing a determination that the sample packages of imported produce submitted by the domestic packers as insufficiently marked were legally marked by names and words which appeared on the back side of the packaging in close proximity to nutritional and other information. HRL 731830 (November 21, 1988).

The packers appealed this determination to the Court of International Trade. In *Norcal/Crosetti Foods, Inc. et al. v. U.S. Customs Service*, 758 F. Supp. 729 (1991)(*Norcal I*), the CIT (Musgrave, J.) ruled that frozen produce is not marked in a conspicuous place unless marked on the front side of the package. At the direction of the CIT, Customs issued T.D. 91-48 (56 FR 24115, May 28, 1991), requiring that packages of frozen produce be so marked.

On appeal by the government, the Court of Appeals for the Federal Circuit ruled on procedural grounds in *Norcal II*, 963 F. 2d 356 (1992), that the packers' claims were not properly before the lower court and ordered the complaint dismissed for lack of jurisdiction. The appellate court indicated that a proper course would have been for the packers to initiate a proceeding before Customs under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), as they now have done.

Because the petition asks Customs to reconsider the position stated in HRL 731830, and to adopt the findings of the

Court of International Trade, we summarize at length that court's findings. It is noted that Customs did not contest the court's substantive findings, its appeal having been based only upon various procedural points.

The Court of International Trade found that the only consistency in the country of origin marking practices for imported frozen produce was the inconsistency of where the manufacturer may choose to place the marking. Most often, the marking is lost among the various small typeface information which appears on the back or side panels. The court stated that producers are reluctant to display conspicuously the source of the food. The result of these inconsistencies, it found, was that a customer could not be assured of easily finding the country of origin marking, even if he or she were to casually inspect the package within a reasonable time frame. This is at cross-purposes with Congress' attempt to provide the country of origin to consumers before they decide to purchase.

The court took judicial notice of the common method of displaying the merchandise in shelved freezers or frozen food bins with the front panel in view and the rear panel obscured and found that frozen vegetables are commonly marketed in long, low freezers with open tops, or wall-mounted freezers with glass doors. The court also took judicial notice that access to frozen produce is limited and sometimes awkward, given that the produce must not defrost. It found that the packages are usually displayed so that only the front panel is clearly visible. Customers are unable to scan the labels on frozen produce as easily as they can for those on dry goods or other produce that is not frozen. The court noted, firstly, that the product is actually frozen and cold to the touch and secondly that, at least in upright freezers, the freezer door must be held open. The court found that these factors prevent the consumer from having the opportunity to see the country of origin marking that is secluded among the small print on the back of the package.

The Court of International Trade found the analogy in the ruling to the placement of nutritional information on packages unconvincing, because that information was not required information at all. In contrast, it found a more persuasive analogy in the Food and Drug Administration (FDA) requirement that packages disclose the weight of their contents on the principal display panel. Such quantity of contents disclosure must be a certain size, located on the front, or most prominent

panel, of the package. However, the court cautioned that Customs cannot interpret the marking statute according to requirements set forth in FDA Regulations, and should analogize "hesitantly and perspicaciously" to these Regulations.

The court also observed that certain packages of frozen produce listed the name and U.S. address of the manufacturer, and failed to indicate the country of origin in close proximity as required under the Customs Regulations. Applying 19 CFR 134.46, the court held that if the words "U.S.," or "America," or a United States address appear on those labels, the article would have to be marked to indicate the country of origin in lettering of at least a comparable size.

The court concluded by finding that although Customs has routinely interpreted "conspicuous" through 19 CFR 134.41(b), it failed in its issuance of HRL 731830 to follow the clear meaning of the statute or the regulation. Section 134.41(b) of the Customs Regulations provides, among other things, that a country of origin marking shall be easily found by the ultimate purchaser and read without strain. For imported frozen produce, country of origin marking requirements were not met by the present practice of indicating the country of origin marking on the rear or side panel of frozen produce.

The Petition

The instant petition was initiated by letters dated January 13 and January 29, 1993, and filed with Customs under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516) and part 175, Customs Regulations (19 CFR part 175). The petitioners are Norcal Crosetti Foods, Inc. and Patterson Frozen Foods, Inc., California packers of produce grown domestically. The International Brotherhood of Teamsters, on behalf of its Local 912, submitted a letter dated March 1, 1993, supporting the Norcal and Patterson petition. The petitioners contend that imported frozen produce is not marked in accordance with the requirement of 19 U.S.C. 1304 that the country of origin shall appear in a conspicuous place; under a correct application of 19 U.S.C. 1304 the indication of country must appear on front side of a package to be considered as marked in a conspicuous place. These domestic producers argue further that Customs standards for the size and prominence of such markings are not in conformity with 19 U.S.C. 1304.

The petition and other supporting materials include numerous samples of current frozen produce packages which are alleged to be defective for the

various reasons stated above, and for others. The presently claimed defects in the permitted marking for these articles closely mirror the findings of the Court of International Trade: Current marking is found "buried in a sea of cooking instructions" on the back panel in a manner that cannot be noticed; as displayed for retail sale, only the front side of the package is visible, and it is not likely or practical for the consumer to turn it over to look for country of origin marking; imported produce is sold in the same type of packaging used previously for domestic products; and various products are marked illegibly, confusingly, or misleadingly.

Customs published a notice in the *Federal Register* on September 9, 1993 (58 FR 47413), advising the public of the petitioners' contentions and providing opportunity for public comments on the issues raised in the petition.

Discussion of Comments and Issuers

Twenty-three comments were submitted. The commenters include a number of trade organizations, companies in the business of manufacturing, processing, and distributing produce; an organization representing a group of domestic farmers; an import/export organization; a sales and marketing company; two members of the U.S. House of Representatives; the Canadian government; a Canadian trade organization; private U.S. citizens; members and officials of the International Brotherhood of Teamsters; the California Department of Justice; District Attorneys in California; and the petitioners.

Approximately half of the public comments expressed support of the Norcal petition to require the country of origin marking of imported frozen produce to appear on the front panel of the packaging.

These commenters presented extensive data and argument concerning the nature of frozen produce and the manner of its storage and presentation for sale, contending mainly that the inherent coldness of frozen produce makes the packaging more cumbersome to handle than other food products. These commenters believe accordingly that the ultimate purchaser is likely to examine the produce in haste, and is not likely to see country of origin marking which appears on the back or side of the packaging.

Some respondents also expressed concern that frozen produce packaging tends to accumulate frost while being stored in refrigerators, such that the country of origin marking often becomes obscured in a way that is unique to

frozen produce. In view of these factors, it is argued, country of origin marking which does not appear on the front of these frozen produce packages cannot be considered in a conspicuous place, and cannot meet the standard stated at 19 CFR 134.41(b) that marking must be easily found and read without strain.

Commenters opposed to the petition tend to dismiss these contentions as unfounded. They see no reason to establish a different marking location for frozen produce packages as opposed to other imported articles. They see coldness as no fundamental obstacle to handling a frozen produce package and turning it over to find country of origin marking. They assert that even the information appearing on the front panel probably cannot be read without picking up the package.

Customs believes it is appropriate to consider the nature of an imported article, and in particular, the manner of its presentation to ultimate purchasers in the U.S., in determining the acceptable location for country of origin marking. In this instance the coldness of the article, and its manner of presentation, are factors to be given some weight. The opponents of the petition have not shown any established consumer expectation of marking which appears exclusively or customarily on the back or side panels, and we find credible the petitioners claims of a reduced likelihood that ultimate purchasers will examine the back or side panels of packaged frozen produce to find marking. Moreover, the specific findings of the Court of International Trade on these points will be given appropriate deference by the Customs Service.

The petitioners, as well as several subsequent commenters, submitted for consideration numerous samples of frozen produce packaging as evidence of common marking practices which were said to be short of the statutory standards for permanence, legibility, and conspicuousness. All the markings shown on the sample packages appear on the back panel.

One major category of sample packages consisted of rectangular packages on which all the printed information, except the country of origin marking, is pre-printed. The latter instead is evidently stamped after the package is filled with frozen produce. The quality of this marking tends to be poor, and for the most part does not satisfy existing standards for permanence and legibility. The location is quite inconsistent between various packages in the same batch. Sometimes the lettering is stamped over pre-printed information; sometimes it is sideways or

crooked; and sometimes it is smudged. These stamped-on markings are insufficient under all three of the principal criteria of 19 U.S.C. 1304—legibility, permanence, and conspicuous placement.

Commenters opposed to the petition believe that these defects should be remedied by enforcement under the regulations of current standards governing legibility, permanence, and conspicuous placement, and that there is no compelling evidence that the current regulations are inadequate.

While some of the packages with stamped-on markings are in compliance with the requirements of section 304, this seems to have occurred by happenstance and not by consistently following any pattern of marking. Customs believes that the petitioners and other respondents have identified a marking practice for which one obvious remedy is a requirement for a single location for marking these products. A marking which is not consistently placed, on an article which may be bought repeatedly by the same ultimate purchaser, tends to be a marking which is not easily found. This problem is compounded, in the case of frozen produce, by the fact that supplies may change on short notice between domestic and foreign and among foreign sources. The petitioners and other commenters have made a credible showing that present marking practices for these products tend to minimize disclosure of country of origin.

Other sample packages submitted by the petitioners and other commenters, while marked permanently and legibly under current standards (on the back panel), showed geographic markings or names which could create confusion or be misleading as to the country of origin of the frozen produce. Some such names or markings were part of the distributors' trade marks, while others used generic names for vegetable products in potentially confusing ways. The petitioners and other commenters argue that the remedy for these potentially confusing or misleading markings is country of origin marking which appears uniformly on the front panel of the package. They believe the ultimate purchaser is less likely to inspect frozen produce on its back panel to ascertain its country of origin when the front panel of the packaging indicates in print a reference to a locale in a country other than the country of origin.

Commenters opposed to the petition do not believe that ultimate purchasers are deceived by such references. One opponent indicated that while in some cases marking on the front panel of the

package may be needed, it is not generally necessary if the current regulations were enforced in all cases.

One of the sample packages already has been the subject of corrective action and a ruling by Customs. See HQ 735085 (June 4, 1993) (Mixed frozen vegetables sold as "American Mixtures" required to have country of origin marking on front of package to be considered conspicuously marked; Customs indicated at that time, however, that marking on the back could be permissible in the absence of potentially confusing words or marks).

Customs is of the view that while it could continue, on a case-by-case basis, to correct the types of marking problems identified by the petitioners, and will do so as necessary, a more comprehensive solution is needed to assure proper marking of frozen produce articles. More restricted remedies might include specifying, in rulings and other decisions, all the circumstances in which the requirements of 19 CFR 134.46 are to apply. That provision of the Customs Regulations requires the name of an article's country of origin to appear "in close proximity" and in lettering of comparable size to any reference to a place other than the country of origin which appears on an imported article. Customs is electing, however, to adopt instead a blanket requirement that marking appear on the front of the frozen produce package in the lettering and placement specified below. This will afford a definitive solution to a problem which the petitioners have shown to be extensive.

Much of the imported frozen produce sold in the U.S. is packaged after importation. As such, the marking of the packages is not subject to physical supervision by Customs, but is performed under importers' certifications for the marking of repacked articles tendered in accordance with 19 CFR 134.25. The administrative burden of enforcing the marking of such repacked articles case by case is an additional reason for setting out instead uniform specifications for the marking of frozen produce. Such specifications will reduce ambiguity and interpretive questions, thus facilitating broad-based compliance by importers, packagers and distributors.

Finally, the petitioners and other commenters claim that country of origin markings which appear on the back sides of packages are obscured, or as they put it, "buried", by their placement among numerous items of printed information. Some of this information is nutritional statements, some is recipe

material, and some is general distribution information.

The commenters in favor of retaining Customs' current standards of conspicuousness, i.e., that the back or side panels of frozen produce packages are conspicuous places for marking, do not believe that frozen produce presents any unique circumstances which would necessitate implementing a separate standard of marking. In support of their position against changing the current standard, they point out that the back panel of a produce package is considered conspicuous for listing nutritional information under food labeling regulations administered by the Food and Drug Administration. They maintain that the ultimate purchaser interested in knowing the country of origin will look at the back panel for the country of origin marking as well. To date, this also has been the basis for the Customs position that marking the country of origin on the back of the package is acceptable. See HRL 731830 (November 21, 1988).

The petitioners and their supporters point to the same lack of consistency in the placement of marking noted by the CIT. They argue that Customs was mistaken in supposing that because FDA regulations for nutritional information allowed it to be placed on the back panel, country of origin marking on the back panel was also conspicuous; nutritional information was not required food labeling information at the time of the Customs ruling in 1988. A number of commenters endorse the court's finding that if the food labeling requirements of the Food and Drug Administration are to serve as guidance, the requirements to be consulted are those for the declaration of a food article's net quantity of contents. For this information, bold lettering in specified type sizes, appearing on the front panel, is the standard. The adoption of this FDA standard for country of origin marking would be facilitated by the familiarity of packaging designers with FDA printing requirements.

One commenter states that in recent years there has been a proliferation of statements appearing on the back panels of frozen produce, such that back panels no longer are conspicuous places for the location of country of origin marking. One commenter submitted a survey of California consumers in which 60 percent of those asked could not find the country of origin marking on the "American Mixtures" packaging within two minutes. Another commenter argued that permitting country of origin marking to appear near nutritional information on the back side of the

package allows it to appear in one of the least conspicuous places on the package.

Customs agrees with the petitioners and with the court that marking of frozen produce on the front panel is needed to place the marking in the conspicuous place required under 19 U.S.C. 1304. While marking on the front side is obviously conspicuous, the nature of the back panels of these packages is such that country of origin marking appearing there cannot be reliably found easily and read without strain by the ultimate purchaser. 19 CFR 134.41(b). The likelihood that the marking will be "buried" has been sufficiently demonstrated by the petitioners and other commenters to make this requirement necessary to give effect to the intent of the drafters of 19 U.S.C. 1304.

Further, taking account of the the court's admonition against analogizing without due care to regulations of another agency, Customs agrees with the petitioners and others that standards and specifications based upon the Food Labeling Regulations of the Food and Drug Administration are useful models. Here, the statutory standard of prominence and conspicuousness for food labeling, embodied in 21 U.S.C. 343(f), is sufficiently similar to the Tariff Act requirement of conspicuousness as to make these specifications serviceable for Tariff Act purposes. We are adopting specifications for the marking of frozen produce articles, as set forth below, closely modeled upon the Food Labeling requirements for the declaration of net quantity of contents.

Customs Decision on the Petition

Customs has determined, after review of all the comments and upon consideration of the legal and policy factors, that the arguments presented in the petition have merit. The correct administration of the country of origin marking statute and regulations with respect to frozen produce requires a reversal of the previous Customs position. Customs has given full weight and consideration to the views and findings of the Court of International Trade in *Norcal I*. We find that the nature of frozen produce and its typical retail presentation makes marking on the back panel insufficient; that there are numerous examples of insufficient and potentially misleading marking practices based on marking the back side; that marking appearing on the back panels of frozen produce packages is not easily found and read without strain; and that consequently, a uniform standard of conspicuousness is needed

for these products to assure proper marking under 19 U.S.C. 1304. The standards for the declaration of net quantity of contents under the Food Labeling regulations are, again, useful models for marking which is conspicuous. standards for country of origin marking on packaged frozen produce.

Customs is for these reasons exercising its authority under 19 U.S.C. 1304(a)(1) to prescribe " * * * any reasonable method of marking * * * and a conspicuous place on the article (or container) where the marking shall appear." The effect of such a determination, as effected under § 134.42, Customs Regulations (19 CFR 134.42), is to remove any option on the part of an importer or other person to select from marking locations and methods which satisfy the general criteria of section 304 of the Tariff Act; a limited number of locations or methods will be acceptable for the marking of frozen produce.

Implementation of Front Panel Marking

Customs recognizes that manufacturers, distributors, and packers of imported frozen produce will need to consider revisions in their current packaging which may be needed to comply with this decision. Recognizing the potential burdens, Customs has determined that the usual 30-day period for implementing a correction in valuation, classification, or rate of duty set forth at 19 CFR 175.22(a) is not sufficient. The legally effective date of this change in practice or position is on or after the 30th day after the date of this decision. However, to minimize the burden of this new requirement upon affected persons, the date for compliance with this decision will be May 8, 1994. This date coincides with the date established by the U.S. Food and Drug Administration for compliance with its new labeling requirements under the Nutrition Labeling and Education Act of 1990, Public Law 101-535. See 58 FR 2065 *et seq.* (January 6, 1993) for the regulatory requirements for food labeling which will take effect on that date.

Inasmuch as companies already are engaged in extensive revisions of labeling on food packaging, any burdens caused by this decision should be incremental. Food manufacturers and packagers, including foreign concerns already importing into the U.S., are intimately familiar with the Food Labeling Regulations administered by the Food and Drug Administration. It will be less burdensome for them to comply with requirements modeled after existing standards affecting the

frozen produce industry than to meet separate, uncoordinated standards for country of origin marking.

In general, and for all practical purposes, the front side of frozen produce packaging corresponds with the area of a package designated as the "principal display panel" under § 101.1 of the Federal Food Labeling Regulations (21 CFR 101.1). The principal display panel is defined as the part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale. *id.* For purposes of country of origin marking under 19 U.S.C. 1304 and part 134, Customs Regulations, the front side of a frozen produce package shall be the principal display panel as defined above.

The Food Labeling Regulations provide further that all information appearing on the principal display panel shall appear prominently and conspicuously, and in no case may the letters or numbers be less than one-sixteenth inch in height. See 21 CFR 101.2(c). Under the Food, Drug, and Cosmetic Act, information that is required to appear on the food label must appear with adequate prominence and conspicuousness to assure that it will be read and understood by consumers. 21 U.S.C. 343(f). The presentation of the required information may lack the requisite conspicuousness and prominence if the label fails to provide sufficient label space; there is interference from non-required words, statements, designs or devices; or if the information is rendered in small or illegible type, with insufficient background contrast, or with crowding. These considerations, enumerated at 21 CFR 101.15, closely parallel the factors usually considered by Customs in defining conspicuousness and legibility for purposes of 19 U.S.C. 1304.

To further insure the conspicuousness and legibility of the indication of country of origin, and in recognition of the expertise of the Food and Drug Administration with respect to food labeling, we are modeling Customs requirements on certain of the specifications set forth under § 101.105 of the Food Labeling Regulations which apply to the required declaration of net quantity of contents as the specification for the indication of origin. Like our new requirement for marking on the front of the package, the declaration of net quantity of contents is required to appear on the principal display panel. In its new labeling regulations the Food and Drug Administration itself relied upon the net quantity of content

provisions in setting new type size requirements.

Particular Specifications

The following specifications, modeled after 21 CFR 101.105, are needed for the enforcement of uniform standards of conspicuousness and legibility, and are to be followed in marking packages of frozen produce under 19 U.S.C. 1304.

1. The indication of origin shall appear as a distinct item on the principal display panel, separated by a space at least equal to the height of the lettering used in the indication. It is not required that the indication of origin appear within the bottom 30 percent of the area of the panel, but the lettering must be in lines generally parallel to the base on which the package rests as it is designed to be displayed. (Reference: 21 CFR 101.105(f)).

2. The indication shall appear in conspicuous and easily legible boldface upper case Roman or sans serif print or type which shall be in distinct contrast (by typography, layout, or color) to its background. Condensed or compressed typefaces or arrangements shall not be used. (Reference: 21 CFR 101.105(h)).

3. The ratio of height to width of a letter shall not exceed a differential of 3 units to 1 unit (no more than three times as high as it is wide). (Reference: 21 CFR 101.105(h)(1)).

4. The indication shall be in letters and numerals in a type size established in relationship to the area of the principal display panel of the package and shall be uniform for all packages of substantially the same size by complying with the following type specifications:

(a) Not less than one-sixteenth inch in height on packages the principal display panel of which has an area of 5 square inches or less.

(b) Not less than one-eighth inch in height on packages the principal display panel of which has an area of more than 5 but not more than 25 square inches.

(c) Not less than three-sixteenths inch in height on packages the principal display panel of which has an area of more than 25 but not more than 100 square inches.

(d) Not less than one-fourth inch in height on packages the principal display panel of which has an area of more than 100 square inches, except not less than 1/2 inch in height if the area is more than 400 square inches. (Reference: 21 CFR 101.105(i)).

Country of origin marking meeting the foregoing minimum specifications will be required to appear beginning on May 8, 1994, on all packages of frozen produce which are subject to the requirements of 19 U.S.C. 1304 and Part

134, Customs Regulations. Equally, this marking will be required for all such articles imported into the U.S. which are subject to the certification and post-importation packaging and marking requirements of 19 CFR 134.25 and 19 CFR 134.26.

Compliance Advisory

Affected persons are reminded of Customs position that the mere combining or mixing of frozen produce prior to retail packaging does not relieve any person of the obligation to mark the packaged article in accordance with Customs requirements. Thus, if foreign origin produce is mixed with domestic produce, the package is subject to marking in accordance with this decision. Packages containing produce from a variety of sources are required to be marked to indicate all the foreign countries of origin of the produce they contain. See HQ 735085 (June 4, 1993)(Green Giant "American Mixtures" decision). Any interested person who believes that a particular form of processing excepts an article from marking may seek confirmation from Customs by applying for a ruling in accordance with 19 CFR part 177.

Previous Decisions Affected

HRL 731830 (November 21, 1988), is revoked. T.D. 91-48 (May 28, 1991), is modified. Conspicuous marking within the meaning of T.D. 91-48 shall be limited to marking which complies with the specifications set forth in this decision.

Authority

This notice is published in accordance with section 175.22(a), Customs Regulations (19 CFR 175.22(a)).

Drafting Information

The principal drafter of this document was Robert Cascardo, Value and Marking Branch, U.S. Customs Service. Personnel from other Customs offices participated in its development.

Approved: December 17, 1993.
George J. Weise,
Commissioner of Customs.
John P. Simpson,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 93-31855 Filed 12-28-93; 8:45 am]

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Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8505]

RIN 1545-AS31

Mark to Market for Dealers in Securities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations providing guidance to enable taxpayers to comply with the mark-to-market requirements of section 475. The temporary regulations provide guidance concerning the meaning of the statutory terms "dealer in securities," "held for investment," and "security." The text of these temporary regulations also serves as the text of the proposed regulations set forth 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 29, 1993.

For dates of applicability, see § 1.475(e)-1T.

FOR FURTHER INFORMATION CONTACT: Robert B. Williams at (202) 622-3960 or Jo Lynn Ricks at (202) 622-3920 (not toll-free calls).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1422. The estimated annual burden per recordkeeper varies from .25 to 3 hours, depending on individual circumstances, with an estimated average of 1 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the IRS. Individual recordkeepers may require greater or less time, depending on their particular circumstances.

For further information concerning this collection of information and where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the

preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the Federal Register.

Background

This document contains temporary regulations under section 475 (relating to mark-to-market accounting for dealers in securities). Section 475 was added by section 13223 of the Revenue Reconciliation Act of 1993, Pub. L. 103-66, 107 Stat. 481, and is effective for all taxable years ending on or after December 31, 1993.

On October 25, 1993, the IRS issued a revenue ruling that began the process of providing substantive guidance under the mark-to-market rules. The ruling was published as Rev. Rul. 93-76, 1993-35 I.R.B. 11 (November 8, 1993). These temporary regulations clarify several issues that were addressed in that ruling, including the meaning of the statutory terms "dealer in securities" and "held for investment."

Explanation of Provisions

Section 475(b) exempts certain securities from mark-to-market accounting under section 475(a). Among the exempted securities are those held for investment and debt securities not held for sale. The regulations clarify that held for investment, within the meaning of section 475(b)(1)(A), and not held for sale, within the meaning of section 475(b)(1)(B), have the same meaning. The regulations provide that both terms refer to a security that is not held by a taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

By providing that a security is held for investment if it is not held primarily for sale to customers in the ordinary course of a trade or business, the regulations adopt the concept of held for investment in section 1236(a). Thus, under these regulations, a dealer in securities may identify as held for investment a security that it holds primarily for sale to non-customers (e.g., a trading security). The IRS believes that providing a single standard for purposes of sections 475 and 1236 is consistent with the purpose of section 475. Comments are requested regarding other ways to simplify the task of identification.

Holding 5 of Rev. Rul. 93-76 suggested that some securities properly identified as held for investment under section 1236(a) may not be identified as held for investment under section 475(b). Accordingly, Holding 5 of Rev. Rul. 93-76 is modified.

The regulations identify certain assets that are inherently investments and,

thus, may not be marked to market under section 475. Under the regulations, the following assets held by a dealer in securities are deemed to be properly identified as held for investment: (1) Stock in a corporation that the taxpayer controls; (2) a partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust that the taxpayer controls; and (3) an annuity, endowment, or life insurance contract. The regulations define control for these purposes. Comments are requested as to other *per se* investments that should be deemed identified as held for investment.

Under the authority of section 475(b)(4), the regulations provide that certain notional principal contracts and derivative securities (described in section 475(c)(2)(D) or (E)) that are held by a dealer in those securities are generally not eligible to be exempted from mark-to-market treatment as held for investment. This rule does not apply, however, if the taxpayer establishes unambiguously that the security was acquired other than in the taxpayer's capacity as a dealer in such securities. It is anticipated that this exception will apply only in rare instances.

The regulations provide rules regarding a security held by a taxpayer as of the close of the last taxable year ending before December 31, 1993. If the security was identified under section 1236 as a security held for investment, the security is treated as being identified as held for investment for purposes of section 475(b). If the security was not identified under section 1236, the regulations provide that the security is treated as having been properly identified under section 475(b)(2) if the information in the dealer's records as of the close of that year supports the identification. If there is any ambiguity in those records, the taxpayer must, no later than January 31, 1994, place in its records a statement unambiguously indicating which securities are to be treated as properly identified. Any information that supports treating a security as having been properly identified under section 475(b)(2) must be applied consistently from one security to another. For purposes of identifying the position under section 475(c)(2)(F)(iii), these rules also apply to a position that is a security by virtue of section 475(c)(2)(F).

Holding 9 of Rev. Rul. 93-76 established certain standards that a dealer in securities must apply in determining which of its securities must be marked to market at the beginning of its first taxable year that ends on or after

December 31, 1993. This determination also controls the amount of the taxpayer's net section 481(a) adjustment. The regulations provide rules that are slightly different from the standards set forth in Holding 9. Consistent with the regulatory interpretation of "held for investment" (discussed above), the regulations clarify whether certain securities are treated as having been properly identified for purposes of being exempted from mark to market. Accordingly, Holding 9 of Rev. Rul. 93-76 is modified.

Because the regulations provide new rules concerning the permissibility of certain identifications, a taxpayer has until January 31, 1994, to add or remove these identifications. For example, the regulations provide rules for adding identifications so that securities that were held for sale but were not held for sale to customers may be identified as being described in section 475(b)(1)(A) or (B). This identification may be added only if, prior to December 28, 1993, the taxpayer identified none of these securities as being described in section 475(b)(1)(A) or (B) and only if the retroactive identification is added for all of these securities. A security is not subject to the consistency provision in the preceding sentence if it may be timely identified after the date on which the retroactive identification is added. Thus, a taxpayer gains additional flexibility by making the retroactive identification early. In addition, any taxpayer that is a dealer in notional principal contracts or derivatives described in section 475(c)(2)(D) or (E) that had identified any such securities as held for investment may remove the identification.

If a taxpayer adds or removes an identification discussed above, the regulations provide that the addition is timely for purposes of section 475(b)(2) and that the removal does not subject the taxpayer to the provisions of section 475(d)(2), regarding improper identifications. Similar relief is provided to a taxpayer that corrects identifications of securities held as of the close of the taxpayer's last taxable year ending before December 31, 1993.

In general, the regulations provide that a taxpayer that sells nonfinancial goods or provides nonfinancial services (e.g., a consumer products retailer or an accountant) does not become a dealer in securities within the meaning of section 475(c)(1) by virtue of extending credit for the purchase of its goods or services, even if the taxpayer subsequently sells the evidences of indebtedness so acquired.

The regulations provide that a taxpayer that regularly purchases securities from customers in the ordinary course of a trade or business (including regularly making loans to customers in the ordinary course of a trade or business of making loans) is not thereby a dealer in securities provided that the taxpayer does not sell more than a negligible portion of the securities so acquired. Whether the portion sold is negligible is generally determined without regard to certain extraordinary sales and certain sales of loans that declined in quality after the taxpayer acquired them. The regulations provide examples to illustrate the meaning of the term "negligible portion."

Under the regulations, certain items are not securities within the meaning of section 475(c)(2). These items include: stock of the taxpayer or options to buy or sell the taxpayer's stock; liabilities of the taxpayer; REMIC residual interests that economically represent a liability at the time their basis is determined; and other REMIC residual interests or arrangements that the Commissioner determines have substantially the same economic effect (e.g., a widely held partnership that holds noneconomic REMIC residual interests). Marking these items to market would not carry out the purposes of section 475 and certain other Code sections (e.g., sections 1032 and 860E). Comments are requested as to other items that should similarly be excluded from the definition of a security.

Comments are requested regarding whether additional rules are needed to carry out the purposes of section 475 for taxpayers that hold economic REMIC residual interests or interests in other passthrough entities (including subchapter S corporations or widely held partnerships).

The regulations clarify that marking to market a security that is not held in connection with a taxpayer's activities as a dealer in securities does not affect the character of gain or loss from that security.

These temporary regulations generally apply to taxable years ending on or after December 31, 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 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 authors of these regulations are Robert B. Williams and Jo Lynn Ricks, Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.475(b)-1T also issued under 26 U.S.C. 475(b)(4) and 26 U.S.C. 475(e).

Section 1.475(b)-2T also issued under 26 U.S.C. 475(b)(2), 26 U.S.C. 475(e), and 26 U.S.C. 6001.

Section 1.475(c)-1T also issued under 26 U.S.C. 475(e).

Section 1.475(c)-2T also issued under 26 U.S.C. 475(e) and 26 U.S.C. 860G(e).

Section 1.475(d)-1T also issued under 26 U.S.C. 475(e).

Section 1.475(e)-1T also issued under 26 U.S.C. 475(e). * * *

Par. 2. Sections 1.475(b)-1T, 1.475(b)-2T, 1.475(c)-1T, 1.475(c)-2T, 1.475(d)-1T, and 1.475(e)-1T are added under the heading "Inventories" to read as follows:

§ 1.475(b)-1T Scope of exemptions from mark-to-market requirement (temporary).

(a) *Securities held for investment or not held for sale.* Except as provided by paragraph (c) of this section, a security is held for investment (within the meaning of section 475(b)(1)(A)) or not held for sale (within the meaning of section 475(b)(1)(B)) if it is not held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

(b) *Securities deemed identified as held for investment—(1) In general.* The

following items held by a dealer in securities are *per se* held for investment within the meaning of section 475(b)(1)(A) and are deemed to be properly identified as such for purposes of section 475(b)(2)—

(i) Stock in a corporation that the taxpayer controls (within the meaning of paragraph (b)(2)(i) of this section);

(ii) A partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust that the taxpayer controls (within the meaning of paragraph (b)(2)(ii) of this section); or

(iii) A contract that is treated for Federal income tax purposes as an annuity, endowment, or life insurance contract (see sections 817 and 7702).

(2) *Control defined.* Control means the ownership, directly or indirectly through persons described in section 267(b) (taking into account section 267(c)), of—

(i) 50 percent or more of the total combined voting power of all classes of stock entitled to vote; or

(ii) 50 percent or more of the capital interest, the profits interest, or the beneficial ownership interest in the widely held or publicly traded partnership or trust.

(c) *Securities deemed not held for investment—(1) General rule for dealers in notional principal contracts and derivatives.* Section 475(b)(1)(A) (exempting certain securities from mark-to-market accounting) does not apply to a security if—

(i) The security is described in subparagraph (D) or (E) of section 475(c)(2) (describing certain notional principal contracts and derivative securities); and

(ii) The taxpayer is a dealer in such securities.

(2) *Exception for securities not acquired in dealer capacity.* Paragraph (c)(1) of this section does not apply if the taxpayer establishes unambiguously that the security was not acquired in the taxpayer's capacity as a dealer in such securities.

§ 1.475(b)-2T Exemptions—Transitional issues (temporary).

(a) *Transitional identification—(1) Certain securities previously identified under section 1236.* If, as of the close of the last taxable year ending before December 31, 1993, a security was identified under section 1236 as a security held for investment, the security is treated as being identified as held for investment for purposes of section 475(b).

(2) *Consistency requirement for other securities.* In the case of a security (including a security described in

section 475(c)(2)(F) that is not described in paragraph (a)(1) of this section and that was held by the taxpayer as of the close of the last taxable year ending before December 31, 1993, the security is treated as having been properly identified under section 475(b)(2) or section 475(c)(2)(F)(iii) if the information contained in the dealer's books and records as of the close of that year supports the identification. If there is any ambiguity in those records, the taxpayer must, no later than January 31, 1994, place in its records a statement resolving this ambiguity and indicating unambiguously which securities are to be treated as properly identified. Any information that supports treating a security as having been properly identified under section 475(b)(2) or section 475(c)(2)(F)(iii) must be applied consistently from one security to another.

(b) *Corrections on or before January 31, 1994*—(1) *Purpose*. This paragraph (b) allows a taxpayer to add or remove certain identifications covered by § 1.475(b)-1T.

(2) *To conform to § 1.475(b)-1T(a)*—(i) *Added identifications*. To the extent permitted by paragraph (b)(2)(ii) of this section, a taxpayer may identify as being described in section 475(b)(1) (A) or (B)—

(A) A security that was held for immediate sale but was not held primarily for sale to customers in the ordinary course of the taxpayer's trade or business (e.g., a trading security); or

(B) An evidence of indebtedness that was not held for sale to customers in the ordinary course of the taxpayer's trade or business and that the taxpayer intended to hold for less than one year.

(ii) *Limitations*. An identification described in paragraph (b)(2)(i) of this section is permitted only if—

(A) Prior to December 28, 1993, the taxpayer did not identify as being described in section 475(b)(1) (A) or (B) any of the securities described in paragraph (b)(2)(i) of this section;

(B) The taxpayer identifies every security described in paragraph (b)(2)(i) for which a timely identification of the security under section 475(b)(2) cannot be made after the date on which the taxpayer makes these added identifications; and

(C) The identification is made on or before January 31, 1994.

(3) *To conform to § 1.475(b)-1T(c)*. On or before January 31, 1994, a taxpayer described in § 1.475(b)-1T(c)(1)(ii) may remove an identification under section 475(b)(1)(A) of a security described in § 1.475(b)-1T(c)(1)(i).

(c) *Effect of corrections*. An identification added under paragraph (a)(2) or (b)(2) of this section is timely for purposes of section 475(b)(2) or section 475(c)(2)(F)(iii). An identification removed under paragraph (a)(2) or (b)(3) of this section does not subject the taxpayer to the provisions of section 475(d)(2).

§ 1.475(c)-1T Definitions—Dealers in securities (temporary).

(a) *Sellers of nonfinancial goods and services*. If the principal activity of a taxpayer is selling nonfinancial goods or providing nonfinancial services, the fact that the taxpayer extends credit to the purchasers of its nonfinancial goods or services does not make the taxpayer a dealer in securities within the meaning of section 475(c)(1), even if the taxpayer sells the evidences of indebtedness so acquired. The preceding sentence does not apply if, for purposes of section 471, the taxpayer claims to be a dealer in those evidences of indebtedness.

(b) *Taxpayers that purchase securities but do not sell more than a negligible portion of the securities*—(1) *Exemption from dealer status*. A taxpayer that regularly purchases securities from customers in the ordinary course of a trade or business (including regularly making loans to customers in the ordinary course of a trade or business of making loans) is not thereby a dealer in securities for purposes of section 475(c)(1) if the taxpayer does not sell more than a negligible portion of the securities so acquired. The preceding sentence does not apply if, for purposes of section 471, the taxpayer claims to be a dealer in those securities.

(2) *Negligible portion*. The meaning of negligible portion is illustrated by the following examples:

(i) *Example 1*. A regularly acquires loans (both by making loans to customers and by otherwise purchasing loans) in the ordinary course of its business. A retains almost all of the loans that it acquires. In 1993, A sells fewer than 60 loans. Accordingly, in 1993 A does not sell more than a negligible portion of the securities it acquired.

(ii) *Example 2*. B regularly acquires loans (both by making loans to customers and by otherwise purchasing loans) in the ordinary course of its business. In 1993, B sells more than 60 loans, but the total adjusted basis of the loans that B sells in 1993 is less than 5% of the total basis, immediately after acquisition, of the loans that it acquires in that year. Accordingly, in 1993 B does not sell more than a negligible portion of the securities it acquired.

(3) *Special rules*. Whether the portion of securities sold is negligible is determined without regard to—

(i) Sales of evidences of indebtedness that decline in quality while in the taxpayer's hands and that are sold pursuant to an established policy of the taxpayer to dispose of evidences of indebtedness below a certain quality; or

(ii) Sales that are necessitated by exceptional circumstances and that are not undertaken as recurring business activities.

§ 1.475(c)-2T Definitions—Items that are not securities (temporary).

(a) *In general*. The following items held by a dealer in securities are not securities within the meaning of section 475(c)(2) and, therefore, are not subject to section 475—

(1) Stock (including treasury stock) of the taxpayer and any option to buy or sell its stock (including treasury stock);

(2) A liability of the taxpayer; or

(3) A REMIC residual interest that is described in paragraph (b) of this section or an interest or arrangement that is determined by the Commissioner to have substantially the same economic effect.

(b) *Negative value REMIC residuals*. A residual interest in a REMIC is described in this paragraph (b) if, on the date the taxpayer acquires the residual interest, the present value of the anticipated tax liabilities associated with holding the interest exceeds the sum of—

(1) The present value of the expected future distributions on the interest; and

(2) The present value of the anticipated tax savings associated with holding the interest as the REMIC generates losses.

(c) *Special rules*. Solely for purposes of paragraphs (a)(3) and (b) of this section—

(1) If a transferee taxpayer acquires a residual interest with a basis determined by reference to the transferor's basis, then the transferee is deemed to acquire the interest on the date the transferor acquired it (or is deemed to acquire it under this paragraph (c)(1)).

(2) Anticipated tax liabilities, expected future distributions, and anticipated tax savings are determined under the rules in § 1.860E-2(a)(3) and without regard to the operation of section 475.

(3) Present values are determined under the rules in § 1.860E-2(a)(4).

§ 1.475(d)-1T Character of gain or loss (temporary).

If a security is never held in connection with the taxpayer's activities

as a dealer in securities, section 475(d)(3)(A) does not affect the character of gain or loss from the security, even if the taxpayer fails to identify the security under section 475(b)(2).

§ 1.475(e)-1T Effective dates (temporary).

Sections 1.475(b)-1T, 1.475(b)-2T, 1.475(c)-1T, 1.475(c)-2T, and 1.475(d)-1T generally apply to taxable years ending on or after December 31, 1993.

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101(c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

CFR part or section where identified and described	Current OMB control number
1.475(b)-2T	1545-1422

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: December 15, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93-31310 Filed 12-28-93; 8:45 am]

BILLING CODE 4830-01-U

26 CFR Parts 1 and 602

[TD 8507]

RIN 1545-AQ78

Information Reporting for Reimbursements of Interest on Qualified Mortgages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6050H of the Internal Revenue Code relating to the information reporting requirements for reimbursements of interest paid in connection with a qualified mortgage. This information is required by the Internal Revenue Service to encourage compliance with the tax laws relating to the deductibility of payments of mortgage interest. The information will be used to determine whether mortgage interest reimbursements have been correctly reported on the return of the taxpayer who receives the reimbursement.

EFFECTIVE DATE: These regulations are effective December 29, 1993.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1339. The collection of information requirement in these regulations is satisfied by including the additional information on a Form 1098 filed with the Service and on a statement furnished to the payor of record (a substitute Form 1098). The estimated burden for filing Form 1098 and the statement to the payor of record (substitute Form 1098) is reflected in the burden estimates for Form 1098.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document provides final regulations amending the Income Tax Regulations (26 CFR part 1) under section 6050H of the Internal Revenue Code of 1986 (Code). On October 16, 1992, the IRS published in the *Federal Register* a Notice of Proposed Rulemaking (57 FR 47428) relating to the information reporting requirements for reimbursements of interest paid on qualified mortgages. Before adopting the final regulations, the IRS solicited comments and held a public hearing on the proposed regulations. The IRS received eighteen written comments. In addition, three persons provided oral comments at the public hearing held on November 30, 1992. The amendments to the regulations contained in this document are adopted after consideration of the written comments and the testimony at the public hearing.

Comments on Proposed Regulations

A. Effective Date

Under section 6050H, interest recipients must (1) file an information return (Form 1098) with the IRS, and (2) furnish a statement to the payor of record on the mortgage. Under the proposed regulations, Forms 1098 filed with the IRS after December 31, 1993, were required to include the

information relating to the reimbursement of mortgage interest. However, mortgage interest reimbursements were to be reported on statements required to be furnished to payors of record after December 31, 1992 (i.e., for statements relating to 1992 reimbursements).

Commentators argued that compliance with this effective date would be unduly burdensome and, in some cases, impossible. The commentators noted that the data processing systems of the interest recipients had not been programmed to identify reimbursements of interest made in 1992 and, thus, compliance with the regulations would require a very costly manual search of records and preparation of statements. Commentators requested that the effective date for statements furnished to payors of record be after December 31, 1993, consistent with the effective date for Forms 1098 filed with the IRS.

The final regulations, therefore, provide that reimbursements of interest on a qualified mortgage made in 1993 and subsequent calendar years must be reported on both Forms 1098 filed with the IRS and statements furnished to payors of record. This change was first announced in Notice 92-60, 1992-2 C.B. 387. In addition, for reimbursements made in 1993, no penalties will be imposed under sections 6721 through 6724 for failure to comply with the reporting requirements of these regulations. Reimbursements made prior to 1993 are not required to be reported.

B. Information Reported to Payors of Record

The proposed regulations provided that, on the statement furnished to payors of record under § 1.6050H-2(b), the year or years in which the interest overpayments were made and the portion of the reimbursement attributable to each year must be reported. Commentators recommended that this requirement not be included in the final regulations. The commentators argued that compliance would impose data processing difficulties. Further, the commentators noted that reporting the year or years of overpayment is important to only a small minority of payors of record—those that deducted all of their mortgage interest in some years but not in other years. Because the information is relevant to only a small number of payors of record, the commentators argued that it should not be required to be reported. Rather, if a payor of record needs to know the year(s) of overpayment, the payor of

record can contact the interest recipient directly to obtain the information.

Therefore, the requirement in the proposed regulations that interest recipients report to the payor of record the year or years in which the interest overpayments were made and the portion of the reimbursement attributable to each year has been excluded from the final regulations. Under the final regulations, with respect to mortgage interest reimbursements, the reimbursement amount reported on Form 1098 to the Internal Revenue is the only amount required to be reported on statements furnished to payors of record. This change was first announced in Notice 92-60.

C. Information Reporting Threshold

The proposed regulations required any reimbursement of prior year overpayments of interest to be reported if the reimbursement relates to an amount of interest required to be reported on a Form 1098 in such prior year. Commentators stated that the regulations should provide a de minimis rule relating to the amount of reimbursement that must be reported. Some commentators recommended a \$600 threshold for the reporting of reimbursements, consistent with the threshold for reporting mortgage interest received.

In response to those comments, the final regulations provide that, with respect to reimbursements of interest on a qualified mortgage in a calendar year, (a) reimbursements aggregating \$600 or more must be reported, and (b) reimbursements aggregating less than \$600 must be reported only in instances where \$600 or more of interest on the qualified mortgage is received in the calendar year of the reimbursement from the payor of record. Thus, under the regulations, reimbursements aggregating \$600 or more in a calendar year must be reported. However, reimbursements aggregating less than \$600 must be reported only if a Form 1098 is otherwise required to be filed for the payor of record that received the reimbursement because at least \$600 of mortgage interest is received in the calendar year from the payor of record.

D. Reporting Reimbursements on Form 1098

Some commentators contended that reimbursements of interest on a qualified mortgage are reportable under section 6041 of the Code and thus should be reported on Form 1099-MISC. The proposed regulations make clear that the reimbursements are reportable under section 6050H on Form 1098.

The final regulations maintain the position prescribed in the proposed regulations that reimbursements of interest on a qualified mortgage must be reported on Form 1098. The Internal Revenue explored the possibility of requiring the reporting of mortgage interest reimbursements on Form 1099-MISC under section 6041. It was decided, however, that section 6050H was the more appropriate reporting section because the reporting of reimbursements of mortgage interest clearly comes within section 6050H(b)(2)(D), which allows the Secretary to require other information to be reported under section 6050H in addition to the name and address of the taxpayer and the amount of mortgage interest received during the calendar year. A reimbursement of mortgage interest relates to an amount that in all likelihood was previously deducted by the borrower. The inclusion of the reimbursed amount in gross income effectively reverses part of the mortgage interest previously deducted. Thus, the requirement to report the interest reimbursement under section 6050H is in keeping with the statutory intent of that section, which is to encourage compliance with the tax laws relating to the deduction for mortgage interest. See H.R. Rep. No. 432, 98th Cong., 2d Sess. 1353 (1984). Finally, the Internal Revenue wishes to clarify that reimbursements of mortgage interest are not subject to Form 1099 reporting under section 6041.

E. Reporting of Interest on Reimbursements

Commentators requested more guidance on the reporting of interest paid with respect to reimbursed amounts (i.e., the amount paid to the borrower, in addition to the refund of an overpayment, that constitutes interest for the use of the borrower's funds). The proposed regulations provide only that Form 1098 and the statement furnished to the payor of record must not include any amount that constitutes interest on the reimbursement paid to the payor of record.

The final regulations provide that, in the case of a person carrying on the banking business (or a middleman, as defined in § 1.6049-4(f)(4), of a person carrying on the banking business), rules relating to the reporting of interest on a reimbursement of mortgage interest are provided in section 6049 and the regulations thereunder. Persons subject to section 6049 must report payments of interest aggregating \$10 or more to a payor of record during the calendar year.

The final regulations also provide that, for persons not subject to section 6049 reporting for the payment of interest on a reimbursement of mortgage interest, rules relating to the reporting of such interest payments are provided in section 6041 and the regulations thereunder. Because section 6041 provides a \$600 threshold amount, persons not subject to section 6049 reporting for the payment of interest on a reimbursement of mortgage interest would be required to report only those payments of interest aggregating \$600 or more to a payor of record.

F. Other Comments

The IRS received a number of comments in addition to those summarized above. Some of the suggestions contained in the comments have been adopted in the final regulations. Other suggested changes were not adopted primarily because those suggestions were inconsistent with the purpose of the regulations.

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 Code, the notice of proposed rulemaking for the regulations 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 regulations is Stephen J. Toomey of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are 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. 7905 * * *. Section 1.6050H-2 is also issued under 26 U.S.C. 6050H. * * *

Par. 2. Section 1.6050H-2 is amended as follows:

1. The word "and" at the end of paragraph (a)(2)(iii) is removed.
2. Paragraph (a)(2)(iv) is redesignated as paragraph (a)(2)(v).
3. A new paragraph (a)(2)(iv) is added.
4. Paragraphs (a)(3) and (a)(4) are redesignated as paragraphs (a)(4) and (a)(5), respectively, and a new paragraph (a)(3) is added.
5. Newly designated paragraph (a)(4) is revised.
6. Paragraph (b)(2)(iii) is revised.
7. At the end of paragraph (b)(2)(iii), "." is removed and "; and" is added in its place.
8. Paragraph (b)(2)(iv) is added.
9. Paragraph (b)(6) is revised.
10. The added and revised provisions read as follows:

§ 1.6050H-2 Time, form, and manner of reporting interest received on qualified mortgage.

(a) * * *
(2) * * *

(iv) With respect to reimbursements of interest on a qualified mortgage (as discussed in paragraph (a)(3) of this section) made to the payor of record in the calendar year—

(A) Reimbursements aggregating \$600 or more; and

(B) Reimbursements aggregating less than \$600, but only if \$600 or more of interest on the qualified mortgage is received in the calendar year from the payor of record; and

* * * * *

(3) *Reimbursements of interest on a qualified mortgage.* For purposes of paragraph (a)(2)(iv) of this section, a reimbursement of interest on a qualified mortgage is a reimbursement of an amount received in a prior year that was required to be reported for that prior year under paragraph (a)(2)(iii) of this section by any interest recipient. Only the interest recipient that makes the reimbursement is required to report the reimbursement under this section. Form 1098 and the statement furnished to the payor of record under paragraph (b) of this section must not include any amount that constitutes interest on the reimbursement paid to the payor of record. Rules relating to the requirement to report interest on a reimbursement are, in the case of a person carrying on the banking business (or a middleman,

as defined in § 1.6049-4(f)(4), of a person carrying on the banking business), provided in section 6049 and the regulations thereunder, and, for other persons, provided in section 6041 and the regulations thereunder. Reimbursements of interest on a qualified mortgage (as described in this section) made in 1993 and subsequent calendar years must be reported on Form 1098 and statements furnished to payors of record. Reimbursements made prior to 1993 are not required to be reported.

(4) *Time and place for filing return.* An interest recipient must file a return required by paragraph (a) of this section on or before February 28 of the year following the calendar year for which it receives the mortgage interest. If no interest is required to be reported for the calendar year, but a reimbursement of interest on a qualified mortgage is required to be reported for the calendar year, then a return required by paragraph (a) of this section must be filed on or before February 28 of the year following the calendar year in which the reimbursement was made. An interest recipient must file the return required by paragraph (a) of this section with the IRS office designated in the instructions for Form 1098.

* * * * *

(b) * * *
(2) * * *

(ii) A legend that—

(A) Identifies the statement as important tax information that is being furnished to the IRS; and

(B) Notifies the payor of record that if the payor of record is required to file a return, a negligence penalty or other sanction may be imposed on the payor of record if the IRS determines that an underpayment of tax results because the payor of record overstated a deduction for this mortgage interest (if any) or understated income from this mortgage interest reimbursement (if any) on the payor of record's return;

* * * * *

(iv) With respect to any information required to be reported under paragraph (a)(2)(iv) of this section, an instruction providing that the amount of the reimbursement is not to be deducted and that the amount must be included in the gross income of the payor of record if the reimbursement interest was deducted by the payor of record in a prior year so as to reduce income tax.

* * * * *

(6) *Time and place for furnishing statement.* An interest recipient must furnish a statement required by paragraph (b)(1) of this section to a payor of record on or before January 31

of the year following the calendar year for which it receives the mortgage interest. If no mortgage interest is required to be reported for the calendar year, but a reimbursement of interest on a qualified mortgage is required to be reported for the calendar year, then the statement required by paragraph (b)(1) of this section must be furnished on or before January 31 of the year following the calendar year in which the reimbursement was made. The interest recipient will be considered to have furnished the statement to the payor of record if it mails the statement to the payor of record's last known address.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par 5. In § 602.101(c), the table is amended by revising the entry for § 1.6050H-2 to read: "1.6050H-2 * * * 1545-0901, 1545-1339".

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: December 16, 1993.

Samuel Y. Sessions,

Acting Assistant Secretary of the Treasury.

[FR Doc. 93-31307 Filed 12-28-93; 8:45 am]

BILLING CODE 4830-01-U

26 CFR Parts 1, 301 and 602

[TD 8513]

RIN 1545-AJ31

Bad Debt Reserves of Banks

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final income tax regulations relating to bad debt reserves of large banks. These regulations are necessary because the Tax Reform Act of 1986 repealed bad debt reserves for large banks. The regulations implement this repeal.

EFFECTIVE DATE: The regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Craig Wojay, (202) 622-3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:
Paperwork Reduction Act

The collection of information contained in these final regulations has

been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1290. The estimated annual burden per respondent varies from 10 minutes to 20 minutes, depending on individual circumstances, with an estimated average of 15 minutes.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the IRS. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer PC:FP, Washington, DC. 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC. 20503.

Background

This document provides final regulations on the repeal, for large banks, of the reserve method of accounting for bad debts that is allowed by section 585 of the Internal Revenue Code (Code). These regulations reflect Code section 585(c), which was added by section 901 of the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2085, 2375-2380 (1986), and amended by section 1009(a) of the Technical and Miscellaneous Revenue Act of 1988, Public Law 100-647, 102 Stat. 3342, 3445 (1988). These final regulations supersede related portions of 26 CFR 301.9100-7T (formerly 26 CFR 5h.5), which provides temporary regulations on the time and manner of making various elections under the Tax Reform Act of 1986.

Proposed regulations under Code section 585(c) were published in the **Federal Register** on December 12, 1990 (55 FR 51124). No public hearing on these regulations was requested or held, but a number of written comments were received. After consideration of the comments, the proposed regulations are adopted as modified by this Treasury decision.

Explanation of Provisions

Code section 585(c) provides that large banks may not use the reserve method of section 585 for taxable years beginning after December 31, 1986. After this date, large banks must use the specific charge-off method of accounting

for bad debts. Section 585(c) also provides procedures for large banks to use in changing from the reserve method of section 585 to the specific charge-off method. Section 585(c)(3) provides a recapture method of change, and section 585(c)(4) provides an elective cut-off method of change.

The final regulations contained in this document implement section 585(c) by adding new §§ 1.585-5 through 1.585-8 and by making conforming amendments to §§ 1.585-1, 1.585-2 and 1.585-3. Section 1.585-5 states the general rule of denial of bad debt reserves for large banks. Section 1.585-6 provides guidance on the recapture method of change; § 1.585-7, on the cut-off method of change; and § 1.585-8, on making and revoking elections allowed under the regulations.

The extent to which this Treasury decision reflects the comments received on the proposed regulations is discussed below.

Section 1.585-5: Denial of Bad Debt Reserves for Large Banks

Section 1.585-5(a) requires a large bank to change to the specific charge-off method in the first taxable year beginning after 1986 for which it is a large bank (the disqualification year). Section 1.585-5(b) explains how to determine whether an institution is a large bank, and § 1.585-5(c) explains how to determine a bank's average total assets for purposes of applying the \$500 million test of large bank status.

Section 1.585-5(a): Thrift Institutions

Several commentators on the proposed regulations objected to a provision in proposed § 1.585-5(a) that prohibited an institution from following the rules of § 1.585-6 or § 1.585-7 if it had maintained a reserve under Code section 593, rather than section 585. Proposed regulations under section 593 (57 FR 1232 (1992)) address this issue, and § 1.585-5(a) has been modified to reflect the fact that those regulations, when finalized, will provide guidance. Final § 1.585-5(a) prohibits these institutions from following §§ 1.585-6 and 1.585-7, "except as may be provided otherwise in regulations prescribed under section 593."

Section 1.585-5(b)(1): Once a Large Bank

A commentator on the proposed regulations objected to the "once a large bank, always a large bank" rule that is provided by § 1.585-5(b)(1)'s reference to any preceding taxable year after 1986. However, Code section 585(c)(2) specifically requires this reference. Moreover, the Conference Committee on

the Technical and Miscellaneous Revenue Act of 1988 rejected a proposed exception to this rule. H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess., Vol. II, at 243-244 (1988). For these reasons, the final regulations retain the "once a large bank" rule.

Section 1.585-5(b)(1): Section 338 Elections

To clarify the application of the "once a large bank" rule, the final regulations provide guidance on the treatment of section 338 elections in determining large bank status. New Example 4 of § 1.585-5(b)(3) involves a corporation that purchases the stock of a bank and elects under section 338 to treat the purchase as an asset acquisition. Under section 338, the acquired bank is treated as a new corporation for purposes of subtitle A. Accordingly, the bank's prior status as a large bank does not cause it to be considered a large bank after its sale.

Section 1.585-5(b)(2): Transfer of Large Bank's Assets

Several commentators focused on proposed § 1.585-5(b)(3), which applied the "once a large bank" rule to certain acquisitions of substantially all of a large bank's assets. In response to the comments, final § 1.585-5(b)(2)(iii) limits this provision primarily to acquisitions to which section 381(a) applies. Under final § 1.585-5(b)(2)(iv), other acquisitions of substantially all of a large bank's assets result in large bank treatment only if a principal purpose of the acquisition is to avoid treating the acquired assets as those of a large bank and the acquirer is related to the large bank whose assets are acquired, as specified in the regulations.

Section 1.585-5(c)(2): Dates for Determining Average Total Assets

The final regulations also modify § 1.585-5(c), which defines a bank's average total assets for purposes of applying the \$500 million test. As requested by a commentator, the final regulations give banks the option of determining their average total assets on a more frequent basis than quarterly. Under new § 1.585-5(c)(2)(i)(B), a bank may compute its average total assets for a year on the basis of its adjusted tax bases of assets held at the end of any regular interval more frequent than quarterly, such as bi-monthly, monthly, or weekly. A more frequent determination of assets generally produces a more accurate average for the year.

Section 1.585-5(c)(3): Foreign Corporation's Assets

Final § 1.585-5(c)(3)(ii) makes it clear that in determining the amount of a foreign corporation's total assets, all of its assets are taken into account, including those that are not effectively connected with the conduct of a banking business within the United States. Section 585(c)(2) applies the \$500 million test to "all assets" of a bank or its parent-subsidary controlled group, and § 1.585-6(d)(3)(i) provides the equivalent clarification for purposes of determining a bank's nonperforming loan percentage.

Section 1.585-5(d): Disqualification Year

In response to a comment, the final regulations also clarify the definition of the term *disqualification year*. A new example in § 1.585-5(d)(3) makes it clear that if a small bank becomes large because its stock is acquired by a large bank, the disqualification year of the acquired bank is its first taxable year ending after the acquisition date. Pursuant to § 1.585-8(d), the acquired bank is then entitled to make its own election regarding use of the recapture or cut-off method of change.

Section 1.585-6: Recapture Method of Change

Under the recapture method of change, a bank includes the balance of its bad debt reserve in income over a four-year period, and recapture is suspended for any taxable year in which the bank is financially troubled. Commentators on the proposed regulations focused on § 1.585-6(c), which explains the effects of a disposition of loans by a large bank that is using the recapture method, and § 1.585-6(d), which provides guidance for financially troubled banks.

Section 1.585-6(c)(2): Cessation of Business

Proposed § 1.585-6(c)(2) provided that a large bank that ceases to engage in the banking business before completing recapture of its reserve must include in income the remainder of its section 481(a) adjustment in the taxable year of the cessation. Proposed § 1.585-6(c)(2) also provided that a bank would not be considered to have ceased to engage in the banking business if the cessation was the result of a section 381 transaction. Since the issuance of the proposed regulations, the Service, pursuant to section 446(e) and § 1.446-1(e), published uniform standards for accounting method changes that include guidance on when a taxpayer is considered to have ceased to engage in

business for section 481(a) purposes. See Rev. Proc. 92-20, 1992-1 C.B. 685, 701. To be consistent with this uniform approach, final § 1.585-6(c)(2)(i) provides that whether a bank ceases to engage in the banking business generally is determined under the principles of § 1.446-1(e)(3)(ii) and its administrative procedures. In addition, final § 1.585-6(c)(2)(ii) provides a transition rule for section 381 transactions that occur, or for which a binding written commitment is entered into, on or before March 29, 1994. Under the transition rule, a bank that ceases to engage in the banking business as the result of such a transaction is not treated as ceasing to engage in this business. In response to comments, the final regulations also expand the examples in § 1.585-6(c)(4) to provide additional guidance on the tax consequences of section 381 transactions to which the transition rule applies.

Section 1.585-6(d)(3)(ii): Nonperforming Loan Percentage of Group

Section 1.585-6(d)(3) provides rules for computing a bank's nonperforming loan percentage, which determines whether the bank is considered financially troubled. The numerator of this percentage is the amount of the bank's nonperforming loans, and the denominator is the amount of its equity. Under § 1.585-6(d)(3)(ii), if a bank is a member of a parent-subsidary controlled group, the nonperforming loans and the equity of all members of the group that are financial institutions are treated as those of the bank. In response to a comment, the final regulations permit a bank to count the loans and equity of all members of the parent-subsidary controlled group of which the bank is a member. A bank that computes its nonperforming loan percentage on this basis must do so for all taxable years, and any other bank member of the group must do the same.

Section 1.585-6(d)(3)(iii) and (iv): Amount Reported to Regulator

Proposed § 1.585-6(d)(3)(iii) defined a nonperforming loan essentially as any loan that is considered to be nonperforming by the holder's primary Federal regulatory agency. Similarly, proposed § 1.585-6(d)(3)(iv) defined a bank's equity as its equity (i.e., assets minus liabilities) as determined by the bank's primary Federal regulatory agency. In response to a comment, these sections have been revised to make it clear that the amount of a bank's nonperforming loans or equity is not determined by reference to the adjusted Federal income tax bases of assets, but

rather by reference to amounts that are required to be reported to the primary Federal regulator.

Section 1.585-6(d)(3)(iii)(A): Types of Nonperforming Loans

The final regulations also clarify the definition of a nonperforming loan by identifying specific types of loans that are considered nonperforming. As requested by commentators, and in accordance with the Conference Committee report on the Tax Reform Act of 1986 (page II-329), final § 1.585-6(d)(3)(iii)(A) provides that nonperforming loans include the following types of loans as defined by the Federal Financial Institutions Examination Council (FFIEC): Loans that are past due 90 days or more and still accruing; loans that are in nonaccrual status; and loans that are restructured troubled debt. A loan is not considered to be nonperforming merely because it is past due, if it is past due less than 90 days.

Section 1.585-6(d)(3)(iii)(B): Definition of Loan

The final regulations also provide a definition of the term *loan*. This definition reflects the standards prescribed by the FFIEC. Accordingly, a troubled debt restructuring that is in substance a foreclosure or repossession is not considered a loan. The FFIEC treats "in substance" foreclosures and repossessions the same as formal foreclosures and repossessions; collateral that is considered foreclosed or repossessed is treated as an asset other than a loan. The final regulations provide a special rule for certain securities and bank deposits that are an integral part of a restructuring of troubled loans to a foreign government.

Section 1.585-6(d)(3)(iii): Accrual of Interest

A commentator suggested that the definition of a nonperforming loan that is contained in § 1.585-6(d)(3)(iii) should be used to determine whether interest income on a loan must continue to be accrued under Code section 451. This issue is outside the scope of section 585(c) and therefore is not addressed in these final regulations.

Section 1.585-6(d)(4): Estimated Tax of Financially Troubled Banks

Section 1.585-6(d)(4) provides relief from certain penalties for failure to pay estimated tax. Essentially, this section waives the penalty for failure to pay estimated tax in cases where a bank that is financially troubled in one quarter (and therefore does not pay quarterly estimated tax attributable to recapture of

its reserve) is not financially troubled for the year as a whole (and thus has underpaid its estimated tax). In response to comments, § 1.585-6(d)(4) has been revised to provide that the determination of whether a bank is financially troubled, for purposes of waiving the penalty for failure to pay an installment of estimated tax, is to be based on the bank's nonperforming loan percentage at the time the installment is due. In effect, final § 1.585-6(d)(4) allows a bank to obtain relief from penalties on the basis of its financial status as of the end of the most recent period for which it is required to report to its primary Federal regulator. New Example 3 in § 1.585-6(d)(5) illustrates the operation of this provision.

Section 1.585-7: Elective Cut-off Method of Change

Under the cut-off method of change, a bank continues to maintain its bad debt reserve for loans that it held when it became a large bank (pre-disqualification loans), but it may not deduct new additions to the reserve. If the reserve balance at the end of any taxable year exceeds the amount of the bank's outstanding pre-disqualification loans, the bank must include the amount of the excess in income for that year. Commentators on the proposed regulations focused on § 1.585-7(b), which provides guidance on maintaining a reserve for pre-disqualification loans, and § 1.585-7(d), which explains the effects of a disposition of loans by a large bank that is using the cut-off method.

Section 1.585-7(b)(1): Losses From Sale of Loans

Section 1.585-7(b)(1) requires a bank to charge against its cut-off reserve any losses resulting from its pre-disqualification loans, including losses resulting from the sale or other disposition of these loans. A commentator objected to applying this requirement to losses from the disposition of loans. However, Code section 585(c)(4)(B) specifically requires that "any losses" resulting from pre-disqualification loans be charged against the reserve. Removing this requirement for losses resulting from a disposition of loans would allow banks using the cut-off method to obtain current deductions for pre-disqualification loans that become partially or wholly worthless by selling or otherwise disposing of the loans without charging the losses against the reserve. For these reasons, the requirement is retained.

Section 1.585-7(b)(2): Post-disqualification Increase in Loan Balance

Another commentator suggested that § 1.585-7(b)(2), which defines a pre-disqualification loan, should be expanded to provide that if the balance of such a loan is increased during or after the disqualification year, the amount of the increase is treated as a pre-disqualification loan. However, neither section 585(c) nor its legislative history provides support for this approach. For this reason, the final regulations do not take the approach suggested by the commentator. Instead, § 1.585-7(b)(2) has been clarified by providing that if the amount of a pre-disqualification loan is increased during or after the disqualification year, the amount of the increase is not treated as a pre-disqualification loan.

Section 1.585-7(d)(2): Small Bank's Acquisition of Large Bank's Assets

Another commentator requested guidance on the consequences of a section 381 transaction in which a small bank that maintains a bad debt reserve acquires the assets of a large bank that is using the cut-off method of change, if the acquiror remains small after the acquisition and continues to use the reserve method. New § 1.585-7(d)(2)(ii) and new Example 5 in § 1.585-7(e) explain these consequences. In this case, the large bank's reserve immediately before the section 381 transaction carries over to the acquiror, but the acquiror does not continue the cut-off procedure begun by the large bank. If the six-year moving average amount for all of the newly acquired loans exceeds the balance of the reserve that carries over, the acquiror increases this balance by the amount of the excess. Any such increase in the reserve results in a negative section 481(a) adjustment that must be taken into account as required under section 381.

Section 1.585-7(d)(3): Dispositions Intended to Change Status

Section 1.585-7(d)(3) provides a special rule for dispositions of pre-disqualification loans that are intended to change the status of the loans. The rule applies only if a bank disposes of a "significant amount" of loans, and a commentator suggested that a significant amount be defined. However, a significant amount of loans varies from bank to bank. No fixed dollar amount or percentage is an appropriate measure of significance for all banks. Therefore, the final regulations do not define this term.

Section 1.585-8: Making and Revoking Elections

Certain elections are allowed under §§ 1.585-6 and 1.585-7. A bank may elect to use the cut-off method of change instead of the recapture method, and a bank that uses the recapture method may elect to recapture more than 10 percent of its reserve in its first year of recapture. Commentators on the proposed regulations focused on the time for making and revoking these elections.

Section 1.585-8 (a) and (c): Time for Making and Revoking Elections

Section 1.585-8(a) requires any election to be made by the later of the date that is 60 days after these final regulations are published, or the due date (taking extensions into account) of the electing bank's tax return for the year for which the election is made. Section 1.585-8(c) does not allow an election to be freely revoked after the final date for making the election. Commentators suggested that this time period for making and revoking elections should be extended for banks that become large more than 60 days after these final regulations are published. However, the time period provided for these banks in the regulations is the time period ordinarily provided by the Service for making and revoking elections when final regulations are in effect. Taxpayers ordinarily are not permitted to change elections merely to reduce their tax liability. Therefore, the final regulations do not modify the time period for making and revoking elections.

Section 1.585-8(e): Certain Elections Made or Revoked by Amended Return

A new § 1.585-8(e) applies to elections that are sought to be made or revoked by amended return on or before February 28, 1994. To make or revoke such an election, amended returns must be filed for intervening taxable years if necessary to report tax liability in a manner consistent with the making or revoking of the election.

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 final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for these

regulations was submitted to the Small Business Administration for comment on its impact on small business.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAX

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 * * *

Sections 1.585-5 through 1.585-8 also issued under 26 U.S.C. 585(b)(3).

Par. 2. Section 1.585-1 is amended as follows:

1. The first sentence of paragraph (a) is amended by removing "166(c)" and adding in its place "585(a) (or, for taxable years beginning before January 1, 1987, section 166(c))".

2. The seventh sentence of paragraph (a) is amended by removing "166(c) and the regulations thereunder" and adding in its place "585 (or, for taxable years beginning before January 1, 1987, section 166(c)) and the regulations under section 166".

3. The tenth sentence of paragraph (a) is amended by removing "(a), (b), and (c)".

4. A sentence is added at the end of paragraph (a).

5. Paragraph (b) is revised.

6. The additions and revisions read as follows:

§ 1.585-1 Reserve for losses on loans of banks.

(a) * * * For rules relating to large banks, see §§ 1.585-5 through 1.585-8.

(b) *Application of section—(1) In general.* Except as provided in paragraph (b)(2) of this section, section 585 and this section apply to the following financial institutions—

(i) Any bank (as defined in section 581 and the regulations thereunder) other than a mutual savings bank, domestic building and loan association,

or cooperative bank, to which section 593 applies; and

(ii) Any corporation to which paragraph (b)(1)(i) of this section would apply except for the fact that it is a foreign corporation and in the case of any such foreign corporation, the rules provided by section 585(a) and (b), this section, §§ 1.585-2, 1.585-3, and 1.585-4 apply only with respect to loans outstanding the interest on which is effectively connected with the conduct of a banking business within the United States.

(2) *Exception.* For taxable years beginning after December 31, 1986, section 585(a) and (b) and this section do not apply to any large bank (as defined in § 1.585-5(b)). For these years, a large bank may not deduct any amount under section 585 or any other section for an addition to a reserve for bad debts.

§ 1.585-2 [Amended]

Par. 3. In § 1.585-2, the last sentence of paragraph (d)(3) is amended by adding "585(a)(1) or former section" immediately before "166(c)".

§ 1.585-3 [Amended]

Par. 4. Section 1.585-3 is amended as follows:

1. The first sentence of paragraph (a) is amended by removing "166(c)" and adding in its place "585(a) (or, for taxable years beginning before January 1, 1987, section 166(c))".

2. The first sentence of paragraph (b) is amended by removing "166(c)" and adding in its place "585(a) (or, for taxable years beginning before January 1, 1987, section 166(c))".

3. The second and third sentences of paragraph (b) are amended by removing "166(c)" and adding in its place "585(a) (or former section 166(c))".

Par. 5. Sections 1.585-5, 1.585-6, 1.585-7 and 1.585-8 are added to read as follows:

§ 1.585-5 Denial of bad debt reserves for large banks.

(a) *General rule.* For taxable years beginning after December 31, 1986, a large bank (as defined in paragraph (b) of this section) may not deduct any amount under section 585 or any other section for an addition to a reserve for bad debts. However, for these years, except as provided in § 1.585-7, a large bank may deduct amounts allowed under section 166(a) for specific debts that become worthless in whole or in part. Any large bank that maintained a reserve for bad debts under section 585 for the taxable year immediately preceding its disqualification year (as defined in paragraph (d)(1) of this

section) must follow the rules prescribed by § 1.585-6 or § 1.585-7 for changing from the reserve method of accounting for bad debts that is allowed by section 585, to the specific charge-off method of accounting for bad debts, in its disqualification year. However, except as may be provided otherwise in regulations prescribed under section 593, the rules prescribed by §§ 1.585-6 and 1.585-7 do not apply to a large bank that maintained a reserve for bad debts under section 593 for the taxable year immediately preceding its disqualification year.

(b) *Large bank—(1) General definition.* For purposes of this section, a large bank is any institution described in § 1.585-1(b)(1) (i) or (ii) if, for the taxable year (or for any preceding taxable year beginning after December 31, 1986)—

(i) The average total assets of the institution (determined under paragraph (c) of this section) exceed \$500,000,000; or

(ii) The institution is a member of a parent-subsidary controlled group (as defined in paragraph (d)(2) of this section) and the average total assets of the group exceed \$500,000,000.

(2) *Large bank resulting from transfer by large bank—(i) In general.* If a corporation acquires the assets of a large bank (as defined in this paragraph (b)) in an acquisition to which paragraph (b)(2) (ii), (iii) or (iv) of this section applies, the acquiring corporation (the acquiror) is treated as a large bank for any taxable year ending after the date of the acquisition in which it is an institution described in § 1.585-1(b)(1) (i) or (ii).

(ii) *Transfer of significant portion of assets where control is retained.* This paragraph (b)(2)(ii) applies to any direct or indirect acquisition of a significant portion of a large bank's assets if, after the acquisition, the transferor large bank owns more than 50 percent (by vote or value) of the outstanding stock of the acquiror. For this purpose, stock of an acquiror is considered owned by a transferor bank if the stock is owned by any member of a parent-subsidary controlled group (as defined in paragraph (d)(2) of this section) of which the bank is a member, by any related party within the meaning of section 267(b) or 707(b), or by any person that received the stock in a transaction to which section 355 applies.

(iii) *Transfer to which section 381 applies.* This paragraph (b)(2)(iii) applies to any acquisition to which section 381(a) applies if, immediately after the acquisition, the acquiror's principal method of accounting for bad

debts (determined under § 1.381(c)(4)-1(c)(2)) with respect to its banking business is the specific charge-off method. In applying § 1.381(c)(4)-1(c)(2) for this purpose, the following rules apply: A transferor large bank is considered to use the specific charge-off method for all of its loans immediately before the acquisition; an acquirer is considered to use a reserve method for all of its loans immediately before the acquisition; and all banking businesses of the acquirer immediately after the acquisition are treated as one integrated business. See §§ 1.585-6(c)(3) and 1.585-7(d)(2) for rules on the treatment of assets acquired from large banks in section 381(a) transactions.

(iv) *Transfer of substantially all assets to related party.* This paragraph (b)(2)(iv) applies to any direct or indirect acquisition of substantially all of a large bank's assets if the transferor large bank and the acquirer are related parties before or after the acquisition and a principal purpose of the acquisition is to avoid treating the acquired assets as those of a large bank. A transferor bank and an acquirer are considered to be related parties for this purpose if they are members of the same parent-subsidiary controlled group (as defined in paragraph (d)(2) of this section) or related parties within the meaning of section 267(b) or 707(b).

(3) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. Bank M, a calendar year taxpayer, is an institution described in § 1.585-1(b)(1)(i). For its taxable year beginning on January 1, 1987, M has average total assets of \$600 million. Since M's average total assets for 1987 exceed \$500 million, M is a large bank for that year. Pursuant to § 1.585-5(d)(1), 1987 is M's disqualification year. If M maintained a bad debt reserve under section 585 for its immediately preceding taxable year (1986), M must change in 1987 to the specific charge-off method of accounting for bad debts, in accordance with § 1.585-6 or § 1.585-7.

Example 2. Assume the same facts as in Example 1. Also assume that in 1988 M disposes of a portion of its assets and, as a result, M's average total assets for taxable year 1988 fall to \$400 million. M remains a large bank for taxable year 1988 and succeeding taxable years, since its average total assets for a preceding taxable year (1987) beginning after December 31, 1986, exceeded \$500 million.

Example 3. Bank P, a calendar year taxpayer, is an institution described in § 1.585-1(b)(1)(i). P has average total assets of \$300 million for its taxable year beginning on January 1, 1988. For the same year, P is a member of a parent-subsidiary controlled group (within the meaning of § 1.585-5(d)(2)) that has average total assets of \$800 million. In February 1989, the group sells its stock in

P to several individual investors. P is a large bank for taxable year 1988 because it is a member of a group described in § 1.585-5(b)(1)(ii) for that year. P also is a large bank for taxable year 1989 and succeeding taxable years because it was a member of a group described in § 1.585-5(b)(1)(ii) for a preceding taxable year (1988) beginning after December 31, 1986.

Example 4. Assume the same facts as in Example 3, except that P's stock is purchased by a corporation that is not a large bank under § 1.585-5(b). Also assume that the purchasing corporation elects under section 338 to treat the stock purchase as an asset acquisition. Under section 338, P is considered to have sold all of its assets on the purchase date and is treated as a new corporation that purchased these assets on the next day. Since P is treated as a new corporation, its prior membership in a group described in § 1.585-5(b)(1)(ii) does not cause it to be treated as a large bank for taxable years ending after the date of its sale by the group. However, P may be treated as a large bank because of new membership in such a group or pursuant to § 1.585-5(b)(1)(i) or (b)(2).

Example 5. Bank Q is a large bank, within the meaning of § 1.585-5(b)(1), for its taxable year beginning on January 1, 1988, and hence for all later years. On March 1, 1989, Q transfers \$200 million of its \$600 million of assets to Bank R, a newly created subsidiary, in a transaction to which section 351 applies; these assets are R's only assets. On the same day, Q then spins off R in a transaction to which section 355 applies. After these transactions, the shareholders of Q own more than 50 percent of R's outstanding stock. Although R's average total assets do not exceed \$500 million, R becomes a large bank on March 1, 1989, pursuant to § 1.585-5(b)(2)(ii). These transactions do not affect Q's status as a large bank.

Example 6. Bank S is a large bank, within the meaning of § 1.585-5(b)(1)(ii), for its taxable year beginning on January 1, 1987. As a result, S changes to the specific charge-off method of accounting for bad debts in that year. Bank T, which is not a large bank under § 1.585-5(b), uses the reserve method of accounting for bad debts. On June 30, 1988, T acquires substantially all of S's assets in a transaction to which section 381(a) applies. Immediately before the acquisition, S's banking business has total assets of \$200 million, and T's has total assets of \$250 million. To determine whether T is a large bank under § 1.585-5(b)(2)(iii) for taxable years ending after the acquisition, it is necessary to determine T's principal method of accounting for bad debts with respect to its banking business immediately after the acquisition. This determination requires an application of § 1.381(c)(4)-1(c)(2). For this purpose, T's original and acquired banking businesses are treated as an integrated business. Applying § 1.381(c)(4)-1(c)(2), it is determined that the business's principal method of accounting for bad debts immediately after the acquisition is the reserve method. Hence, the acquisition does not cause T to become a large bank under § 1.585-5(b)(2)(iii).

(c) *Average total assets*—(1) *In general.* For purposes of paragraph (b)(1) of this section, and except as otherwise provided in paragraph (c)(3)(ii) of this section, the average total assets of an institution or group for any taxable year are determined by—

(i) Computing, for each report date (as defined in paragraph (c)(2) of this section) within the taxable year, the amount of total assets (as defined in paragraph (c)(3) of this section) held by the institution or group as of the close of business on the report date;

(ii) Adding these amounts; and

(iii) Dividing the sum of these amounts by the number of report dates within the taxable year.

(2) *Report date*—(i) *Institutions*—(A)

In general. A report date for an institution generally is the last day of the regular period for which the institution must report to its primary Federal regulatory agency. However, an institution that is required to report to its primary Federal regulatory agency more frequently than quarterly may choose the last day of the calendar quarter as its report date, and an institution that is required to report to its primary Federal regulatory agency less frequently than quarterly must choose the last day of the calendar quarter as its report date. If an institution does not have a Federal regulatory agency, its primary State regulatory agency is considered its primary Federal regulatory agency for purposes of this paragraph (c)(2)(i)(A). In the case of a short taxable year that does not otherwise include a report date, the first or last day of the taxable year is the institution's report date for the year.

(B) *Alternative report date.* In lieu of the report date prescribed by paragraph (c)(2)(i)(A) of this section, for any taxable year an institution may choose as its report date the last day of any regular interval in the taxable year that is more frequent than quarterly (such as bi-monthly, monthly, weekly, or daily).

(ii) *Groups.* If all members of a parent-subsidiary controlled group have the same taxable year, a report date for the group is the report date, determined under paragraph (c)(2)(i) of this section, for any one member of the group that is an institution described in § 1.585-1(b)(1) (i) or (ii). The same report date must be used in applying paragraph (b)(1)(ii) of this section to all members of the group for a taxable year. If all members of a parent-subsidiary controlled group do not have the same taxable year, a report date for the group must be determined under similar principles.

(iii) *Member of group for only part of taxable year.* If an institution is a member of a parent-subsidiary controlled group for only part of a taxable year, paragraph (b)(1)(ii) of this section is applied to the institution for that year on the basis of the group's average total assets for the portion of the year that the institution is a member of the group. Thus, only the group's report dates (as determined under paragraph (c)(2)(ii) of this section) that are included in that portion of the year are taken into account in determining the group's average total assets for purposes of applying paragraph (b)(1)(ii) of this section to the institution. If no report date of the group is included in that portion of the year, the first or last day of that portion of the year must be treated as the group's report date for purposes of this paragraph (c)(2)(iii).

(3) *Total assets—(i) All corporations.* The amount of total assets held by an institution or group is the amount of cash, plus the sum of the adjusted bases of all other assets, held by the institution or group. For this purpose, the adjusted basis of an asset generally is its basis for Federal income tax purposes, determined under sections 1012, 1016 and other applicable sections of the Internal Revenue Code. In determining the amount of total assets held by a group, any asset of a member of the group that is an interest in another member of the group is not to be counted.

(ii) *Foreign corporations.* In determining the amount of total assets held by a foreign corporation, all of the corporation's assets are taken into account, including those that are not effectively connected with the conduct of a banking business within the United States. In the case of a foreign corporation that is not engaged in a trade or business in the United States, the adjusted basis of an asset must be determined substantially in accordance with United States tax principles as provided in regulations under section 964. In the case of a foreign corporation that is engaged in a trade or business in the United States, the amount of its average total assets for a taxable year (within the meaning of paragraph (c)(1) of this section) is the amount of the corporation's average worldwide assets used for purposes of computing the interest expense deduction allowable under section 882 and § 1.882-5 for the taxable year.

(4) *Estimated adjusted tax bases—(i) In general.* The amount of the adjusted Federal income tax bases (tax bases) of assets held on a report date may be estimated, for purposes of applying paragraph (c)(3) of this section. This

estimate must be based on the adjusted bases of the assets on that date as determined by reference to the asset holder's books and records maintained for financial reporting purposes (book bases). The estimate must reflect any change in the ratio between the asset holder's tax and book bases of assets that occurs during the taxable year, and the estimate must assume that this change occurs ratably. If an institution or group member estimates the tax bases of assets held on any report date during a taxable year, it must do so for all assets (other than cash) held on that report date, and it must do so for all other report dates during the year. However, the tax bases of assets may not be estimated for any report date that is the first or last day of the taxable year or that is determined under paragraph (c)(2)(i)(B) of this section.

(ii) *Formulas.* The estimated amount of the tax bases of assets held on any report date during a taxable year is based on the following variables: The total book bases of the assets on the report date (B); the asset holder's tax/book ratio as of the close of the preceding taxable year (R); and the result (whether positive or negative) obtained when R is subtracted from the asset holder's tax/book ratio as of the close of the current taxable year (Y). For purposes of determining R and Y, an asset holder's tax/book ratio is the ratio of the total tax bases of all of the holder's assets (other than cash), to the total book bases of those assets. If an asset holder's taxable year is the calendar year and its report date is the last day of the calendar quarter, its estimated tax bases of assets held on the first three report dates of the year are determined under the following formulas:

$$\begin{aligned} \text{1st Report Date} &= B \times (R + \frac{1}{4} Y) \\ \text{2nd Report Date} &= B \times (R + \frac{1}{2} Y) \\ \text{3rd Report Date} &= B \times (R + \frac{3}{4} Y) \end{aligned}$$

(5) *Examples.* The following examples illustrate the principles of this paragraph (c):

Example 1. Bank U is a fiscal year taxpayer, and its fiscal year ends on January 31. U reports to its primary Federal regulatory agency as of the last day of the calendar quarter. U does not choose under § 1.585-5(c)(2)(i)(B) a report date more frequent than quarterly. Thus, U's report dates under § 1.585-5(c)(2)(i)(A) are March 31, June 30, September 30, and December 31. For its taxable year beginning on February 1, 1987, U has total assets (within the meaning of § 1.585-5(c)(3)) of \$480 million on March 31, \$490 million on June 30, \$510 million on September 30, and \$540 million on December 31. Thus, pursuant to § 1.585-5(c)(1), U's average total assets for its taxable year beginning on February 1, 1987, are \$505 million.

Example 2. Bank W is a calendar year taxpayer, and its report date (within the meaning of § 1.585-5(c)(2)(i)(A)) is the last day of the calendar quarter. Pursuant to § 1.585-5(c)(4), W chooses to estimate the tax bases of its assets for 1990. Therefore, W must estimate the tax bases of all of its assets (other than cash) for its first three report dates in 1990. Since W's fourth report date (December 31) is the last day of its taxable year, the tax bases of its assets may not be estimated for this date. The adjusted tax bases of all of W's assets (other than cash) are \$450z on December 31, 1989, and \$480z on December 31, 1990. The book bases of those assets are \$500z on December 31, 1989; \$520z on March 31, 1990; \$540z on June 30, 1990; \$560z on September 30, 1990; and \$600z on December 31, 1990. Applying the formulas provided in § 1.585-5(c)(4)(ii), W's tax/book ratio as of the close of 1989 (R), is 0.9 (450z/500z). W's tax/book ratio as of the close of 1990 is 0.8 (480z/600z). Thus, Y is -0.1. The estimated adjusted tax bases of all of W's assets (other than cash) on the first three report dates of 1990 are as follows:

$$\begin{aligned} \text{1st} &= B \times (R + \frac{1}{4} Y) \\ &= \$520z \times (0.9 + \frac{1}{4} (-0.1)) \\ &= \$455z \\ \text{2nd} &= B \times (R + \frac{1}{2} Y) \\ &= \$540z \times (0.9 + \frac{1}{2} (-0.1)) \\ &= \$459z \\ \text{3rd} &= B \times (R + \frac{3}{4} Y) \\ &= \$560z \times (0.9 + \frac{3}{4} (-0.1)) \\ &= \$462z \end{aligned}$$

(d) *Definitions.* The following definitions apply for purposes of this section and §§ 1.585-6, 1.585-7 and 1.585-8:

(1) *Disqualification year.* A bank's disqualification year is its first taxable year beginning after December 31, 1986, for which the bank is a large bank within the meaning of paragraph (b) of this section.

(2) *Parent-subsidiary controlled group.* A parent-subsidiary controlled group includes all of the members of a controlled group of corporations described in section 1563(a)(1). The members of such a group are determined without regard to whether any member is an excluded member described in section 1563(b)(2), a foreign entity, or a commercial bank.

(3) *Example.* The following example illustrates the principles of this paragraph (d):

Example. Bank X is a large bank within the meaning of § 1.585-5(b)(1)(i). Bank Y is not a large bank under § 1.585-5(b), and it maintains a bad debt reserve under section 585. In 1988, X purchases all of the stock of Y. If the acquisition causes Y to become a member of a parent-subsidiary controlled group described in § 1.585-5(b)(1)(ii), Y is a large bank beginning in its first taxable year that ends after the date of the acquisition. Pursuant to § 1.585-5(d)(1), this year is Y's disqualification year. Y must change in this year to the specific charge-off method of accounting for bad debts, in accordance with § 1.585-6 or § 1.585-7.

§ 1.585-6 Recapture method of changing from the reserve method of section 585.

(a) *General rule.* This section applies to any large bank (as defined in § 1.585-5(b)) that maintained a reserve for bad debts under section 585 for the taxable year immediately preceding its disqualification year (as defined in § 1.585-5(d)(1)) and that does not elect the cut-off method set forth in § 1.585-7. Except as otherwise provided in paragraphs (c) and (d) of this section, any bank to which this section applies must include in income the amount of its net section 481(a) adjustment (as defined in paragraph (b)(3) of this section) over the four-year period beginning with the bank's disqualification year. If a bank follows the rules prescribed by this section, its change to the specific charge-off method of accounting for bad debts in its disqualification year will be treated as a change in accounting method that is made with the consent of the Commissioner. Paragraph (b) of this section specifies the portion of the net section 481(a) adjustment to be included in income in each year of the recapture period; paragraph (c) of this section provides rules on the effect of disposing of loans; and paragraph (d) of this section provides rules on the suspension of recapture by financially troubled banks.

(b) *Four-year spread of net section 481(a) adjustment—(1) In general.* If a bank to which this section applies does not make the election allowed by paragraph (b)(2) of this section, the bank must include in income the following portions of its net section 481(a) adjustment in each year of the four-year recapture period: 10 percent in the bank's disqualification year; 20 percent in its first taxable year after its disqualification year; 30 percent in its second taxable year after its disqualification year; and 40 percent in its third taxable year after its disqualification year.

(2) *Election to include more than 10 percent in disqualification year.* A bank to which this section applies may elect to include in income, in its disqualification year, any percentage of its net section 481(a) adjustment that is larger than 10 percent. Any such election must be made at the time and in the manner prescribed by § 1.585-8. If a bank makes such an election, the bank must include in income the remainder, if any, of its net section 481(a) adjustment in the following portions: $\frac{2}{3}$ of the remainder in the bank's first taxable year after its disqualification year; $\frac{1}{3}$ of the remainder in its second taxable year after its disqualification year; and $\frac{1}{3}$ of

the remainder in its third taxable year after its disqualification year. For this purpose, the remainder of a bank's net section 481(a) adjustment is any portion of the adjustment that the bank does not elect to include in income in its disqualification year.

(3) *Net section 481(a) adjustment.* For purposes of this section, the amount of a bank's net section 481(a) adjustment is the amount of the bank's reserve for bad debts as of the close of the taxable year immediately preceding its disqualification year. Since the change from the reserve method of section 585 is initiated by the taxpayer, the amount of the bank's bad debt reserve for this purpose is not reduced by amounts attributable to taxable years beginning before 1954.

(4) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. Bank M is a large bank within the meaning of § 1.585-5(b). M's disqualification year is its taxable year beginning on January 1, 1989, and M maintained a bad debt reserve under section 585 for the preceding taxable year. Pursuant to § 1.585-5(a), M must change from the reserve method of accounting for bad debts to the specific charge-off method in its disqualification year. M does not elect the cut-off method set forth in § 1.585-7. Thus, M must follow the recapture method set forth in this § 1.585-6. M's net section 481(a) adjustment, as defined in § 1.585-6(b)(3), is \$2 million. M does not make the election allowed by § 1.585-6(b)(2). Pursuant to § 1.585-6(b)(1), M must include the following amounts in income: \$200,000 in taxable year 1989; \$400,000 in 1990; \$600,000 in 1991; and \$800,000 in 1992.

Example 2. Assume the same facts as in Example 1, except that M elects under § 1.585-6(b)(2) to recapture 55 percent of its net section 481(a) adjustment in its disqualification year. Pursuant to § 1.585-6(b)(2), M must include the following amounts in income: \$1,100,000 in taxable year 1989; \$200,000 in 1990; \$300,000 in 1991; and \$400,000 in 1992.

(c) *Effect of disposing of loans—(1) In general.* Except as provided in paragraphs (c)(2) and (c)(3) of this section, if a bank to which this section applies sells or otherwise disposes of any of its outstanding loans on or after the first day of its disqualification year, the disposition does not affect the bank's obligation under this section to include in income the amount of its net section 481(a) adjustment, and the disposition does not affect the amount of this adjustment.

(2) *Cessation of banking business—(i) In general.* If a bank to which this section applies ceases to engage in the business of banking before it is otherwise required to include in income the full amount of its net section 481(a)

adjustment, the bank must include in income the remaining amount of the adjustment in the taxable year in which it ceases to engage in the business of banking. For this purpose, and except as provided in paragraph (c)(2)(ii) of this section, whether a bank ceases to engage in the business of banking is determined under the principles of § 1.446-1(e)(3)(ii) and its administrative procedures.

(ii) *Transition rule.* A bank that ceases to engage in the business of banking as the result of a transaction to which section 381(a) applies is not treated as ceasing to engage in the business of banking if, on or before March 29, 1994, either the transaction occurs or the bank enters into a binding written agreement to carry out the transaction.

(3) *Certain section 381 transactions.* This paragraph (c)(3) applies if a bank to which this section applies transfers outstanding loans to another corporation on or after the first day of the bank's disqualification year (and before it has included in income the full amount of its net section 481(a) adjustment) in a transaction to which section 381(a) applies, and under paragraph (c)(2) (i) or (ii) of this section the transferor bank is not treated as ceasing to engage in the business of banking as a result of the transaction. If this paragraph (c)(3) applies, the acquiring corporation (the acquiror) steps into the shoes of the transferor with respect to using the recapture method prescribed by this section and assumes all of the transferor's rights and obligations under paragraph (b) of this section. The unrecaptured balance of the transferor's net section 481(a) adjustment carries over in the transaction to the acquiror, and the acquiror must complete the four-year recapture procedure begun by the transferor. In applying this procedure, the transferor's taxable year that ends on or includes the date of the acquisition and the acquiror's first taxable year ending after the date of the acquisition represent two consecutive taxable years within the four-year recapture period.

(4) *Examples.* The following examples illustrate the principles of this paragraph (c):

Example 1. Bank P is a bank to which this § 1.585-6 applies. P's disqualification year is its taxable year beginning on January 1, 1989, and P recaptures 10 percent of its net section 481(a) adjustment in that year pursuant to § 1.585-6(b)(1). In July 1990 P disposes of a portion of its loan portfolio in a transaction to which section 381(a) does not apply, and P continues to engage in the business of banking. Pursuant to § 1.585-6(c)(1), the disposition does not affect P's obligation under § 1.585-6(b)(1) to recapture the

remainder of its net section 481(a) adjustment in 1990, 1991 and 1992. Nor does the disposition affect the amount of the adjustment.

Example 2. Assume the same facts as in Example 1, except that P ceases to engage in the business of banking in 1990, as determined under the principles of § 1.446-1(e)(3)(ii) and its administrative procedures. Pursuant to § 1.585-6(c)(2)(i), in 1990 P must include in income the remaining 90 percent of its net section 481(a) adjustment.

Example 3. Assume the same facts as in Example 1, except that P's 1990 disposition of loans is a transaction to which section 381(a) applies, P ceases to engage in the business of banking as a result of the transaction, and P's taxable year ends on the date of the transaction. Thus, in the transaction, P transfers substantially all of its loans to an acquiring corporation (Q). Q is a calendar year taxpayer. Because the transaction occurred before March 29, 1994, the transition rule of § 1.585-6(c)(2)(ii) applies, and P is not treated as ceasing to engage in the business of banking. Pursuant to § 1.585-6(c)(3), Q steps into P's shoes with respect to using the recapture method prescribed by § 1.585-6. The unrecaptured balance of P's net section 481(a) adjustment carries over to Q in the section 381(a) transaction, and Q must complete the four-year recapture procedure begun by P. Pursuant to §§ 1.585-6(b) and 1.585-6(c)(3), P includes 20 percent of its net section 481(a) adjustment in income in its taxable year ending on the date of the section 381(a) transaction, and Q includes 30 percent of the adjustment in income in 1990 and 40 percent in 1991.

Example 4. Assume the same facts as in Example 3. Assume also that Q becomes a large bank under § 1.585-5(b) as a result of the transaction and maintained a bad debt reserve immediately before the transaction. Q must change to the specific charge-off method for all of its loans in the first taxable year that it is a large bank. Thus, Q not only completes the recapture procedure begun by P but also follows the rules prescribed by § 1.585-6 or § 1.585-7 with respect to its own reserve.

Example 5. Assume the same facts as in Example 3. Assume also that Q is not a large bank after the transaction and properly establishes a bad debt reserve for the loans it receives in the transaction. This establishment of the reserve results in a new negative section 481(a) adjustment. Thus, Q not only completes the recapture procedure begun by P but also takes into account the new negative adjustment as required under section 381.

(d) Suspension of recapture by financially troubled banks—(1) In general. Except as provided in paragraph (d)(2) of this section, a bank that is financially troubled (within the meaning of paragraph (d)(3) of this section) for any taxable year must not include any amount in income under paragraphs (a) and (b) of this section for that taxable year and must disregard that taxable year in applying paragraphs (a) and (b) of this section to other

taxable years. See paragraph (d)(4) of this section for rules on determining estimated tax payments of financially troubled banks, and see paragraph (d)(5) of this section for examples illustrating this paragraph (d).

(2) Election to recapture. A bank that is financially troubled (within the meaning of paragraph (d)(3) of this section) for its disqualification year may elect to include in income, in one taxable year, any percentage of its net section 481(a) adjustment that is greater than 10 percent. This election may be made for the bank's disqualification year, for the first taxable year after the disqualification year in which the bank is not financially troubled (within the meaning of paragraph (d)(3) of this section), or for any intervening taxable year. Any such election must be made at the time and in the manner prescribed by § 1.585-8. A bank that makes this election must include an amount in income under paragraphs (a) and (b) of this section in the year for which the election is made (election year) and must not disregard this year in applying paragraphs (a) and (b) of this section to other taxable years. Such a bank must follow the rules of paragraph (b)(2) of this section in applying paragraph (b) of this section to later taxable years, treating the election year as the disqualification year for purposes of applying paragraph (b)(2) of this section. However, if the bank is financially troubled for any year after its election year, the bank must not include any amount in income under paragraphs (a) and (b) of this section for the later year and must disregard the later year in applying paragraphs (a) and (b) of this section to other taxable years.

(3) Definition of financially troubled—
(i) In general. For purposes of this section, a bank is considered financially troubled for any taxable year if the bank's nonperforming loan percentage for that year exceeds 75 percent. For this purpose, a bank's nonperforming loan percentage is the percentage determined by dividing the sum of the outstanding balances of the bank's nonperforming loans (as defined in paragraph (d)(3)(iii) of this section) as of the close of each quarter of the taxable year, by the sum of the amounts of the bank's equity (as defined in paragraph (d)(3)(iv) of this section) as of the close of each such quarter. The quarters for a short taxable year of at least 3 months are the same as those of the bank's annual accounting period, except that quarters ending before or after the short year are disregarded. If a taxable year consists of less than 3 months, the first or last day of the taxable year is treated as the last day of its only quarter. In lieu of

determining its nonperforming loan percentage on the basis of loans and equity as of the close of each quarter of the taxable year, a bank may, for all years, determine this percentage on the basis of loans and equity as of the close of each report date (as defined in § 1.585-5(c)(2), without regard to § 1.585-5(c)(2)(i)(B)). In the case of a bank that is a foreign corporation, all nonperforming loans and equity of the bank are taken into account, including loans and equity that are not effectively connected with the conduct of a banking business within the United States.

(ii) Parent-subsidiary controlled groups—(A) In general. If a bank is a member of a parent-subsidiary controlled group (as defined in § 1.585-5(d)(2)) for the taxable year, the nonperforming loans and the equity of all members of the bank's financial group (as determined under paragraph (d)(3)(ii)(B) of this section) are treated as the nonperforming loans and the equity of the bank for purposes of paragraph (d)(3)(i) of this section. However, any equity interest that a member of a bank's financial group holds in another member of this group is not to be counted in determining equity. Similarly, any loan that a member of a bank's financial group makes to another member of the group is not to be counted in determining nonperforming loans. All banks that are members of the same parent-subsidiary controlled group must (for all taxable years that they are members of this group) determine their nonperforming loan percentage on the basis of the close of each quarter of the taxable year, or all must (for all such taxable years) determine this percentage on the basis of the close of each report date (as determined under § 1.585-5(c)(2)(ii), applied without regard to § 1.585-5(c)(2)(i)(B)).

(B) Financial group—(1) In general. All banks that are members of the same parent-subsidiary controlled group must (for all taxable years that they are members of this group) determine their financial group under paragraph (d)(3)(ii)(B)(2) of this section, or all must (for all such taxable years) determine their financial group under paragraph (d)(3)(ii)(B)(3) of this section.

(2) Financial institution members of parent-subsidiary controlled group. A bank's financial group, determined under this paragraph (d)(3)(ii)(B)(2), consists of all financial institutions within the meaning of section 265(b)(5) (and comparable foreign financial institutions) that are members of the parent-subsidiary controlled group of which the bank is a member.

(3) *All members of parent-subsidiary controlled group.* A bank's financial group, determined under this paragraph (d)(3)(ii)(B)(3), consists of all members of the parent-subsidiary controlled group of which the bank is a member.

(iii) *Nonperforming loan—(A) In general.* For purposes of this section, a nonperforming loan is any loan (as defined in paragraph (d)(3)(iii)(B) of this section) that is considered to be nonperforming by the holder's primary Federal regulatory agency. Nonperforming loans include the following types of loans as defined by the Federal Financial Institutions Examination Council: Loans that are past due 90 days or more and still accruing; loans that are in nonaccrual status; and loans that are restructured troubled debt. A loan is not considered to be nonperforming merely because it is past due, if it is past due less than 90 days. The outstanding balances of nonperforming loans are determined on the basis of amounts that are required to be reported to the holder's primary Federal regulatory agency. For purposes of this paragraph (d)(3)(iii)(A), a holder that does not have a Federal regulatory agency is treated as Federally regulated under the standards prescribed by the Federal Financial Institutions Examination Council.

(B) *Loan.* For purposes of paragraph (d)(3)(iii)(A) of this section, a loan is any extension of credit that is defined and treated as a loan under the standards prescribed by the Federal Financial Institutions Examination Council. (Accordingly, a troubled debt restructuring that is in substance a foreclosure or repossession is not considered a loan.) In addition, a debt evidenced by a security issued by a foreign government is treated as a loan if the security is issued as an integral part of a restructuring of one or more troubled loans to the foreign government (or an agency or instrumentality thereof). Similarly, a deposit with the central bank of a foreign country is treated as a loan if the deposit is made under a deposit facility agreement that is entered into as an integral part of a restructuring of one or more troubled loans to the foreign country's government (or an agency or instrumentality thereof).

(iv) *Equity.* For purposes of this section, the equity of a bank or other financial institution is its equity (i.e., assets minus liabilities) as required to be reported to the institution's primary Federal regulatory agency (or, if the institution does not have a Federal regulatory agency, as required under the standards prescribed by the Federal Financial Institutions Examination

Council). The balance in a reserve for bad debts is not treated as equity.

(4) *Estimated tax payments of financially troubled banks.* For purposes of applying section 6655(e)(2)(A)(i) with respect to any installment of estimated tax, a bank that is financially troubled as of the due date of the installment is treated as if no amount will be included in income under paragraphs (a) and (b) of this section for the taxable year. For this purpose, a bank is considered financially troubled as of the due date of an installment of estimated tax only if its nonperforming loan percentage (computed under paragraph (d)(3) of this section) would exceed 75 percent for a short taxable year ending on that date. For purposes of computing this nonperforming loan percentage, the ending of such a short taxable year would not cause the last day of that year to be treated as the last day of a quarter of the taxable year.

(5) *Examples.* The following examples illustrate the principles of this paragraph (d):

Example 1. Bank R is a bank to which this § 1.585-6 applies. R's disqualification year is its taxable year beginning on January 1, 1987. R is not financially troubled (within the meaning of § 1.585-6(d)(3)) for taxable year 1987 or for any taxable year after 1989, but it is financially troubled for taxable years 1988 and 1989. Since R is not financially troubled for its disqualification year, R must include an amount in income under § 1.585-6 (a) and (b) for that year (taxable year 1987). R may make the election allowed by § 1.585-6(b)(2) for that year. Since R is financially troubled for taxable years 1988 and 1989, pursuant to § 1.585-6(d)(1) R does not include any amount in income under § 1.585-6 (a) and (b) for these years, and it treats taxable years 1990, 1991 and 1992 as the first, second and third taxable years after its disqualification year for purposes of applying § 1.585-6 (a) and (b).

Example 2. Assume the same facts as in Example 1, except that R is financially troubled for taxable year 1987 (its disqualification year). R may make the election allowed by § 1.585-6(d)(2) for 1987 (the disqualification year), for 1990 (the first year after the disqualification year in which R is not financially troubled), or for 1988 or 1989 (the intervening years). R elects to include 60 percent of its net section 481(a) adjustment in income in 1987. Thus, the remainder of the adjustment, for purposes of applying the rules of § 1.585-6(b)(2), is 40 percent. R must include in income 2/9 of the remainder in 1990, 1/3 of the remainder in 1991, and 4/9 of the remainder in 1992.

Example 3. Bank S, which is not a member of a parent-subsidiary controlled group, is a bank to which this § 1.585-6 applies. S's disqualification year is its taxable year beginning on January 1, 1987. S determines its nonperforming loan percentage under § 1.585-6(d)(3) on a quarterly basis. S is not financially troubled for taxable year 1987 and includes 10 percent of its net section 481(a)

adjustment in income in that year. S's outstanding balance of nonperforming loans (as defined in § 1.585-6(d)(3)(iii)) is \$8C million on March 31, 1988; \$68 million on June 30, 1988; and \$59 million on September 30, 1988. The amount of S's equity (as defined in § 1.585-6(d)(3)(iv)) is \$100 million on each of these three dates. Thus, S's nonperforming loan percentage, computed under § 1.585-6(d)(3), would be 80 percent (80/100) for a short taxable year ending on April 15 or June 15, 74 percent [(80+68) + 200] for a short taxable year ending on September 15, and 69 percent [(80+68+59) + 300] for a short taxable year ending on December 15. Since S's nonperforming loan percentage for a short taxable year ending on April 15 or June 15 would exceed 75 percent pursuant to § 1.585-6(d)(4) S is considered financially troubled as of these dates. Thus, S is treated as if no amount will be included in income under § 1.585-6 (a) and (b) for the year for purposes of applying section 6655(e)(2)(A)(i) with respect to the installments of estimated tax that are due on April 15, 1988, and June 15, 1988. However, since S's nonperforming loan percentage for a short taxable year ending on September 15 or December 15 would not exceed 75 percent S is not considered financially troubled as of these dates. Thus, S is treated as if 20 percent of its net section 481(a) adjustment will be included in income under § 1.585-6 (a) and (b) for the year for purposes of applying section 6655(e)(2)(A)(i) with respect to the installments of estimated tax that are due on September 15, 1988, and December 15, 1988.

§ 1.585-7 Elective cut-off method of changing from the reserve method of section 585.

(a) *General rule.* Any large bank (as defined in § 1.585-5(b)) that maintained a reserve for bad debts under section 585 for the taxable year immediately preceding its disqualification year (as defined in § 1.585-5(d)(1)) may elect to use the cut-off method set forth in this section. Any such election must be made at the time and in the manner prescribed by § 1.585-8. If a bank makes this election, the bank must maintain its bad debt reserve for its pre-disqualification loans, as prescribed in paragraph (b) of this section, and the bank must include in income any excess balance in this reserve, as required by paragraph (c) of this section. The bank may not deduct, for its disqualification year or any subsequent taxable year, any amount allowed under section 166(a) for pre-disqualification loans (as defined in paragraph (b)(2) of this section) that become worthless in whole or in part, except as allowed by paragraph (b)(1) of this section. However, except as provided in paragraph (d)(3) of this section, the bank may deduct, for its disqualification year or any subsequent taxable year, amounts allowed under section 166(a) for loans that the bank originates or acquires on or after the first day of its disqualification year and that

become worthless in whole or in part. If a bank makes the election allowed by this paragraph (a), its change to the specific charge-off method of accounting for bad debts in its disqualification year does not give rise to a section 481(a) adjustment.

(b) *Maintaining reserve for pre-disqualification loans—(1) In general.* A bank that makes the election allowed by paragraph (a) of this section must maintain its bad debt reserve for its pre-disqualification loans (as defined in paragraph (b)(2) of this section). Except as provided in paragraph (d)(3) of this section, the bank must charge against the reserve the amount of any losses resulting from these loans (including losses resulting from the sale or other disposition of these loans), and the bank must add to the reserve the amount of recoveries with respect to these loans. In general, the reserve must be maintained in the manner provided by former section 166(c) of the Internal Revenue Code and the regulations thereunder. However, after the balance in the reserve is reduced to zero, the bank is to account for any losses and recoveries with respect to outstanding pre-disqualification loans under the specific charge-off method of accounting for bad debts, as if the bank always had accounted for these loans under this method.

(2) *Definition of pre-disqualification loans.* For purposes of this section, a pre-disqualification loan of a bank is any loan that the bank held on the last day of its taxable year immediately preceding its disqualification year (as defined in § 1.585-5(d)(1)). If the amount of a pre-disqualification loan is increased during or after the disqualification year, the amount of the increase is not treated as a pre-disqualification loan.

(c) *Amount to be included in income when reserve balance exceeds loan balance.* If, as of the close of any taxable year, the balance in a bank's reserve that is maintained under paragraph (b) of this section exceeds the balance of the bank's outstanding pre-disqualification loans, the bank must include in income the amount of the excess for the taxable year. The balance in the reserve is then reduced by the amount of this excess. See paragraph (d) of this section for rules on the application of this paragraph (c) when a bank disposes of loans.

(d) *Effect of disposing of loans—(1) In general.* Except as provided in paragraphs (d)(2) and (d)(3) of this section, if a bank that makes the election allowed by paragraph (a) of this section sells or otherwise disposes of any of its outstanding pre-disqualification loans,

the bank is to reduce the balance of its outstanding pre-disqualification loans by the amount of the loans disposed of, for purposes of applying paragraph (c) of this section.

(2) *Section 381 transactions.* If a bank that makes the election allowed by paragraph (a) of this section transfers outstanding pre-disqualification loans to another corporation in a transaction to which section 381(a) applies, the acquiring corporation (the acquiror) must follow the rules of paragraph (d)(2)(i) or (ii) of this section.

(i) *Acquiror completes cut-off method of change.* Except as provided in paragraph (d)(2)(ii) of this section, the acquiror steps into the shoes of the transferor in the section 381(a) transaction with respect to using the cut-off method of change. Thus, the transferor's bad debt reserve immediately before the section 381(a) transaction carries over to the acquiror, and the acquiror must complete the cut-off method begun by the transferor. For purposes of completing the transferor's cut-off method, the acquiror's balance of outstanding pre-disqualification loans immediately after the section 381(a) transaction is the balance of these loans that it receives in the transaction, and the acquiror assumes all of the transferor's rights and obligations under this section.

(ii) *Acquiror uses reserve method.* If the acquiror is not a large bank (within the meaning of § 1.585-5(b)) immediately after the section 381(a) transaction and uses a reserve method of accounting for bad debts attributable to the pre-disqualification loans (and any other loans) received in the transaction, the acquiror does not step into the shoes of the transferor with respect to using the cut-off method of change. The transferor's bad debt reserve immediately before the section 381(a) transaction carries over to the acquiror, but the acquiror does not continue the cut-off method begun by the transferor. If the six-year moving average amount (as defined in § 1.585-2(c)(1)(ii)) for all of the loans received in the transaction exceeds the balance of the reserve that carries over to the acquiror, the acquiror increases this balance by the amount of the excess. Any such increase in the reserve results in a negative section 481(a) adjustment that is taken into account as required under section 381.

(3) *Dispositions intended to change the status of pre-disqualification loans.* This paragraph (d)(3) applies if a bank that makes the election allowed by paragraph (a) of this section sells, exchanges, or otherwise disposes of a significant amount of its pre-disqualification loans (as defined in

paragraph (b)(2) of this section) and a principal purpose of the transaction is to avoid the provisions of this section by increasing the amount of loans for which deductions are allowable under the specific charge-off method. If this paragraph (d)(3) applies, the District Director may disregard the disposition for purposes of paragraphs (b)(1) and (d)(1) of this section or treat the replacement loans as pre-disqualification loans. If loans are so treated as pre-disqualification loans, no deductions are allowable under the specific charge-off method for the loans, except as provided in paragraph (b)(1) of this section, and the disposition that causes the loans to be so treated may be disregarded for purposes of paragraphs (b)(1) and (d)(1) of this section. If a bank sells pre-disqualification loans and uses the proceeds of the sale to originate new loans, this paragraph (d)(3) does not apply to the transaction.

(e) *Examples.* The following examples illustrate the principles of this section:

Example 1. Bank M is a bank that properly elects to use the cut-off method set forth in this § 1.585-7. M's disqualification year is its taxable year beginning on January 1, 1987. On December 31, 1986, M had outstanding loans of \$700 million (pre-disqualification loans), and the balance in its bad debt reserve was \$10 million. M must maintain its reserve for its pre-disqualification loans in accordance with § 1.585-7(b), and it may not deduct any addition to this reserve for taxable year 1987 or any later year. For these years, M may deduct amounts allowed under section 166(a) for loans that it originates or acquires after December 31, 1986, and that become worthless in whole or in part.

Example 2. Assume the same facts as in Example 1. Also assume that in 1987 M collects \$150 million of its pre-disqualification loans, M determines that \$2 million of its pre-disqualification loans are worthless, and M recovers \$1 million of pre-disqualification loans that it had previously charged against the reserve as worthless. On December 31, 1987, the balance in M's bad debt reserve is \$9 million (\$10 million - \$2 million + \$1 million), and the balance of its outstanding pre-disqualification loans is \$548 million (\$700 million - \$150 million - \$2 million).

Example 3. Assume the same facts as in Examples 1 and 2. Also assume that on December 31, 1990, the balance in M's bad debt reserve is \$5 million and the balance of its outstanding pre-disqualification loans is \$25 million. In 1991 M collects \$21 million of its outstanding pre-disqualification loans and determines that \$1 million of its outstanding pre-disqualification loans are worthless. Thus, on December 31, 1991, the balance in M's bad debt reserve is \$4 million (\$5 million - \$1 million), and the balance of its outstanding pre-disqualification loans is \$3 million (\$25 million - \$21 million - \$1 million). Accordingly, M must include \$1 million (\$4 million - \$3 million) in income in taxable year 1991, pursuant to § 1.585-

7(c). On January 1, 1992, the balance in M's reserve is \$3 million (\$4 million - \$1 million).

Example 4. Assume the same facts as in Examples 1 through 3. Also assume that in 1992 M transfers substantially all of its assets to another corporation (N) in a transaction to which section 381(a) applies, and N is treated as a large bank under § 1.585-5(b)(2) for taxable years ending after the date of the transaction. Pursuant to § 1.585-7(d)(2)(i), N steps into M's shoes with respect to using the cut-off method. M's bad debt reserve immediately before the section 381(a) transaction carries over to N, and N must complete the cut-off procedure begun by M. For this purpose, N's balance of outstanding pre-disqualification loans immediately after the section 381(a) transaction is the balance of these loans that it receives from M.

Example 5. Assume the same facts as in Examples 1 through 4, except that N is not treated as a large bank after the section 381(a) transaction. Also assume that N uses the reserve method of section 585 and plans to use this method for all of the loans it acquires from M (including loans that were not pre-disqualification loans). Pursuant to § 1.585-7(d)(2)(ii), M's bad debt reserve immediately before the section 381(a) transaction carries over to N in the transaction; however, N does not continue the cut-off procedure begun by M and does not treat any loan as a pre-disqualification loan. If the six-year moving average amount (as defined in § 1.585-2(c)(1)(ii)) for all of N's newly acquired loans exceeds the balance of the reserve that carries over to N, N increases this balance by the amount of the excess. Any such increase in the reserve results in a negative section 481(a) adjustment that is taken into account as required under section 381.

§ 1.585-8 Rules for making and revoking elections under §§ 1.585-6 and 1.585-7.

(a) **Time of making elections—(1) In general.** Any election under § 1.585-6(b)(2), § 1.585-6(d)(2) or § 1.585-7(a) must be made on or before the later of—

(i) February 28, 1994; or
(ii) The due date (taking extensions into account) of the electing bank's original tax return for its disqualification year (as defined in § 1.585-5(d)(1)) or, for elections under § 1.585-6(d)(2), the year for which the election is made.

(2) **No extension of time for payment.** Payments of tax due must be made in accordance with chapter 62 of the Internal Revenue Code. However, if an election under § 1.585-6(b)(2), § 1.585-6(d)(2) or § 1.585-7(a) is made or revoked on or before February 28, 1994 and the making or revoking of the election results in an underpayment of estimated tax (within the meaning of section 6655(a)) with respect to an installment of estimated tax due on or before the date the election was so made or revoked, no addition to tax will be imposed under section 6655(a) with respect to the amount of the

underpayment attributable to the making or revoking of the election.

(b) **Manner of making elections—(1)**

In general. Except as provided in paragraph (b)(2) of this section, an electing bank must make any election under § 1.585-6(b)(2), § 1.585-6(d)(2) or § 1.585-7(a) by attaching a statement to its tax return (or amended return) for its disqualification year or, for elections under § 1.585-6(d)(2), the year for which the election is made. This statement must contain the following information:

(i) The name, address and taxpayer identification number of the electing bank;

(ii) The nature of the election being made (i.e., whether the election is to include in income more than 10 percent of the bank's net section 481(a) adjustment under § 1.585-6(b)(2) or (d)(2) or to use the cut-off method under § 1.585-7); and

(iii) If the election is under § 1.585-6(b)(2) or (d)(2), the percentage being elected.

(2) **Certain tax returns filed before December 29, 1993.** A bank is deemed to have made an election under § 1.585-6(b)(2) or (d)(2) if the bank evidences its intent to make an election under section 585(c)(3)(A)(iii)(I) or section 585(c)(3)(B)(ii) for its disqualification year (or, for elections under § 1.585-6(d)(2), the election year), by designating a specific recapture amount on its tax return or amended return for that year (or attaching a statement in accordance with § 301.9100-7T(a)(3)(i) of this chapter), and the return is filed before December 29, 1993. A bank is deemed to have made an election under § 1.585-7(a) if the bank evidences its intent to make an election under section 585(c)(4) for its disqualification year by attaching a statement in accordance with § 301.9100-7T(a)(3)(i) of this chapter to its tax return or amended return for that year, and the return is filed before December 29, 1993.

(c) **Revocation of elections—(1) On or before final date for making election.** An election under § 1.585-6(b)(2), § 1.585-6(d)(2) or § 1.585-7(a) may be revoked without the consent of the Commissioner on or before the final date prescribed by paragraph (a)(1) of this section for making the election. To do so, the bank that made the election must file an amended tax return for its disqualification year (or, for elections under § 1.585-6(d)(2), the year for which the election was made) and attach a statement that—

(i) Includes the bank's name, address and taxpayer identification number;

(ii) Identifies and withdraws the previous election; and

(iii) If the bank is making a new election under § 1.585-6(b)(2), § 1.585-6(d)(2) or § 1.585-7(a), contains the information described in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section.

(2) **After final date for making election.** An election under § 1.585-6(b)(2), § 1.585-6(d)(2) or § 1.585-7(a) may be revoked only with the consent of the Commissioner after the final date prescribed by paragraph (a)(1) of this section for making the election. The Commissioner will grant this consent only in extraordinary circumstances.

(d) **Elections by banks that are members of parent-subsidiary controlled groups.** In the case of a bank that is a member of a parent-subsidiary controlled group (as defined in § 1.585-5(d)(2)), any election under § 1.585-6(b)(2), § 1.585-6(d)(2) or § 1.585-7(a) with respect to the bank is to be made separately by the bank. An election made by one member of such a group is not binding on any other member of the group.

(e) **Elections made or revoked by amended return on or before February 28, 1994.** This paragraph (e) applies to any election that a bank seeks to make under paragraph (b) of this section, or revoke under paragraph (c) of this section, by means of an amended return that is filed on or before February 28, 1994. To make or revoke an election to which this paragraph (e) applies, a bank must file amended returns for all taxable years after the taxable year for which the election is made or revoked by amended return, to any extent necessary to report the bank's tax liability in a manner consistent with the making or revoking of the election by amended return.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 6. The authority citation for part 301 is amended by removing the first entry for "Section 301.9100-7T" and adding an entry to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 301.9100-7T also issued under 26 U.S.C. 42(f)(1), 42(g)(1), 42(i)(2), 42(j)(5), 48(b)(2), 56(f)(3)(B), 83(c)(3), 141(b)(9), 142(d)(1), 142(d)(4)(B), 143(k)(9)(D)(iii), 145(d), 147(b)(4)(A), 165(l)(1), 168(b)(5), 168(f)(1), 168(g)(7), 168(h)(6)(F)(ii), 216(b)(3), 263(i), 263A(d)(3), 382(l)(5)(H), 448(d)(4), 453C(b)(2)(B), 453C(e)(4), 468B, 469(j)(9), 474, 616(d), 617(h), 1059(c)(4), 2632(b)(3), 2652(a)(3), 3121(w)(2), 4982(e)(4), and 7701(b). * * *

§ 301.9100-7T [Amended]

Par. 7. Section 301.9100-7T is amended as follows:

1. The table in paragraph (a)(1) is amended by removing the two entries for "901(a)".

2. The table in paragraph (a)(4)(ii) is amended by removing the entry for "901(a)".

PART 602—OMB CONTROL NUMBER UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. Section 602.101(c) is amended by adding the following entry to the table:

§ 602.101 OMB control numbers.

* * * * *
(c) * * *

CFR part or section where identified and described	Current OMB control number
1.585-8	1545-1290

Philip Brand,
Acting Commissioner of Internal Revenue.
Approved: December 16, 1993.
Samuel Y. Sessions,
Acting Assistant Secretary of the Treasury.
[FR Doc. 93-31577 Filed 12-28-93; 8:45 am]
BILLING CODE 4830-01-U

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 513

Control, Custody, Care, Treatment and Instruction of Inmates; Production or Disclosure of FBI/NCIC Information

AGENCY: Bureau of Prisons, Justice.
ACTION: Final rule.

SUMMARY: In this document the Bureau of Prisons is amending its rule on Production or Disclosure of FBI/NCIC Information to conform to required procedures of the National Crime Information Center (NCIC). Under NCIC procedures, any request by an inmate for his or her National Crime Information Center Interstate Identification Index (NCIC/III) is to be made directly to the Federal Bureau of Investigation (FBI). This amendment is conforming in nature and is intended to provide for the continued efficient operation of the Bureau of Prisons.

EFFECTIVE DATE: December 29, 1993.

ADDRESSES: Office of General Counsel, Bureau of Prisons, Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its rule on Production or Disclosure of FBI/NCIC Information to conform to required procedures of the National Crime Information Center. A final rule on this subject was published in the Federal Register June 30, 1980 (45 FR 44228) and was amended March 12, 1990 (55 FR 9300).

The Bureau's rule on Production or Disclosure of FBI/NCIC Information had allowed for Bureau staff to provide to a requesting inmate a copy of his or her National Crime Information Center Interstate Identification Index (NCIC/III) record. The NCIC/III record is a computerized version of the FBI identification record which may contain additional information. Revised procedures of the NCIC restrict Bureau staff from directly releasing information from these files. According to NCIC procedures, any request from an inmate for this record must be made directly to the Federal Bureau of Investigation (FBI) under the procedures in 28 CFR 16.30 through 16.34. The Bureau is therefore amending its regulations in order to conform to NCIC procedures.

In making this conforming amendment, the Bureau has reorganized and reworded its rule for the sake of clarity and understandability.

Because these amendments are conforming or editorial in nature, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the Federal Register.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 513

Prisoners.
Kathleen M. Hawk,
Director, Bureau of Prisons

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), subchapter A of 28 CFR chapter V is amended as set forth below.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 513—ACCESS TO RECORDS

1. The authority citation for 28 CFR part 513 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. Subpart B, consisting of §§ 513.10 through 513.13, is revised to consist of §§ 513.10 through 513.12 as follows:

Subpart B—Production or Disclosure of FBI/NCIC Information

- Sec. 513.10 Purpose and scope.
- 513.11 Procedures for requesting a FBI identification record or a NCIC/III record.
- 513.12 Inmate request for record clarification.

Subpart B—Production or Disclosure of FBI/NCIC Information

§ 513.10 Purpose and scope.

This subpart describes the procedures to be followed by an inmate who requests a copy of his or her FBI identification record or National Crime Information Center Interstate Identification Index (NCIC/III) record and references the procedures to follow in order to challenge the contents of such record.

§ 513.11 Procedures for requesting a FBI identification record or a NCIC/III record.

(a) *FBI identification record.* (1) An inmate may request a copy of his or her current FBI identification record directly from the FBI by following the procedure outlined in 28 CFR 16.30 through 16.34.

(i) Bureau of Prisons staff shall assist the inmate to obtain the fingerprint impressions required to be submitted with such an application.

(ii) The inmate may direct that funds be withdrawn from his or her institution account to pay the applicable fee.

(2) An inmate may request a copy of his or her FBI identification record from institution staff.

(i) If the requested FBI identification record is in the inmate's institution file, staff shall provide the inmate with a copy.

(ii) If the requested FBI identification record is not in the inmate's institution file, staff shall direct the inmate to the procedure referenced in paragraph (a)(1) of this section.

(b) *NCIC/III identification record.* An inmate who wishes to obtain a copy of his or her NCIC/III record must submit a written request to the FBI. The procedures outlined in 28 CFR 16.32, 16.33, and paragraphs (a)(1)(i) and (ii) of this section apply to such request.

§ 513.12 Inmate request for record clarification.

Where the inmate believes that his or her FBI identification record is incorrect or inaccurate, the inmate may follow procedures outlined in 28 CFR 16.34. The procedures in 28 CFR 16.34 also apply for the clarification of an inmate's NCIC/III record.

[FR Doc. 93-31847 Filed 12-28-93; 8:45 am]
BILLING CODE 4410-05-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AF49

Updating Rehabilitation Criteria

AGENCY: Department of Veterans Affairs.
ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs is revising current provisions under which a service-disabled veteran who has been provided a program of rehabilitation services may be found rehabilitated. Under prior criteria, a determination of rehabilitation was generally limited to cases in which the veteran secured the type of employment specified in his or her rehabilitation plan or had achieved the goals of a program of rehabilitation services. The revision is more consistent with the statutory provisions by also declaring a veteran rehabilitated if he or she has overcome the employment handicap which necessitated the program of rehabilitation services, but may not have done so as stipulated in the rehabilitation plan. The intended effect of these regulatory changes is to make decisions regarding the determination of rehabilitation more consistent with statutory provisions.

DATES: These final rules are effective January 28, 1994.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, (202) 233-6496, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington DC 20420.

SUPPLEMENTARY INFORMATION: VA is amending current provisions for determination of rehabilitation under the vocational rehabilitation program. A veteran may be found rehabilitated if he or she secures suitable employment which meets certain criteria or achieves a substantial increase in his or her independence in daily living. These amendments make substantive changes to criteria for determinations of rehabilitation through the achievement of suitable employment. Determinations of rehabilitation through increased independent living capacity are not substantively changed.

These amendments retain existing provisions under which a veteran is considered to be rehabilitated if he or she secures employment in the field for which training was furnished or in a closely related occupation. The amendments would also allow VA to declare a veteran rehabilitated if one of the following conditions is met.

1. An intensive search for employment in the occupational objective of the veteran's plan or in a closely related occupation or field is unsuccessful. The veteran subsequently secures employment in another occupation or field that also is consistent with his or her abilities, aptitudes, and interests. In addition, the employment must use some of the academic, technical or professional knowledge and skills which the veteran has obtained during his or her participation in the rehabilitation program. He or she must maintain this employment for at least 60 days.

2. A veteran completes the training and rehabilitation services authorized in his or her rehabilitation plan and then declines VA employment services, choosing instead to pursue further training beyond that which may be provided by VA under the rehabilitation program. The veteran may be declared rehabilitated if the additional training will enhance the veteran's ability to secure suitable employment.

3. The veteran does not complete all of the prescribed program of rehabilitation services and subsequently obtains employment which is not in the field or occupation specified in the plan or in a closely related field or

occupation. The veteran may be declared rehabilitated if the employment which he or she has obtained makes substantial use of the services provided in the rehabilitation plan and is consistent with his or her abilities, aptitudes, and interests. The veteran must maintain this employment for at least 60 days.

On June 15, 1992, at pages 26632 through 26634, these proposed regulatory amendments revising criteria for determination of rehabilitation were published in the **Federal Register**.

Interested persons were given 30 days in which to submit their comments, suggestions, or objections to the proposed regulatory amendments. We received extensive comments from a veterans organization.

The veterans organization questioned the intent of the proposed changes, objected to their implementation, and suggested alternatives. These comments have been grouped in the following categories.

Intent of the Proposed Regulatory Changes

Comment. The proposed regulatory amendment is not more consistent with the statutory intent and liberal provisions of 38 U.S.C. chapter 31 than current provisions for determinations of rehabilitation.

Response. VA has established a case status system for administrative purposes to mark the progress of a veteran through the stages of a rehabilitation program. In this system, the "rehabilitated" status is reserved for the purpose of identifying cases in which rehabilitation or employment services goals contemplated by the statute are substantially achieved. However, the current regulation, unfortunately, indicates that administrative assignment of this case status occurs only when the veteran has obtained and maintained employment consistent with the veteran's Individualized Written Rehabilitation Plan (IWRP). Specifically, it does not, as currently worded, permit VA to include cases in which the individual has successfully surmounted an employment handicap through means that did not depend upon completion of the IWRP or elected to forego immediate pursuit of employment goals in order to pursue additional training for another personal objective.

For example, this provision fails to include those cases in which the veteran has overcome his or her employment handicap to the maximum extent feasible, as demonstrated by becoming successfully employed, but may not have done so in the field or occupation.

stipulated by the IWRP. Since this outcome is consistent with the statutory purpose of 38 U.S.C. 3100, i.e., attainment of suitable employment, VA believes that for administrative purposes the individual may be considered to have reached the status of "rehabilitated." Thus, the new regulation would merely recognize this fact in describing cases of individuals deemed to have successfully reached the point of rehabilitation, provided that VA efforts substantially contributed to that result.

Comment. The proposed regulatory amendment is presented purely as a measure of fiscal control.

Response. The proposed changes do not have any effect upon the fiscal costs of administering the vocational rehabilitation program. They are merely descriptive of the facts found. VA will continue to expend the same resources in the cases in question regardless of the outcome, but will merely be recognizing that a successful outcome to which its efforts contributed in a material manner has in fact been reached. It should be noted that the law and regulations also provide for appropriate assistance to individuals previously found rehabilitated, but who, due to changed circumstances, are found to need further VA assistance. Those provisions remain and are in no way limited by the proposal. Thus, fiscal costs are not diminished or increased by the proposal, rather, they remain the same.

Comment. The commenter states that these changes "will have a deleterious effect on VA's Vocational Rehabilitation Program by severely limiting services and probably causing Vocational Rehabilitation Specialists to intentionally develop veterans cases to premature 'rehabilitated' status for case control purposes."

Response. The proposed changes will not affect the services to which a veteran is entitled as a part of a rehabilitation program nor cause premature "rehabilitations." The basis for providing a program of rehabilitation services is a finding that an employment handicap exists which prevents the person from being employed in an occupation which is consistent with his or her abilities, aptitudes, and interests. The services which VA determines are necessary to overcome the employment handicap are provided to the extent that the individual is able and willing to receive them regardless of how that individual is administratively classified. The proposal only recognizes that, for the purposes of administrative classification, some individuals who do not choose to follow the full, original plan for rehabilitation and employment

may, nonetheless, with the VA services provided, overcome their employment handicaps and, in fact, become fully rehabilitated.

Far from rushing to premature "rehabilitation", VA policy requires careful consideration of the programs and services needed for a successful outcome. For example, a veteran may have completed the training portion of a rehabilitation plan and be experiencing difficulty in becoming employed in the objective for which training has been provided. If VA determines that an additional period of training is needed, and any of the conditions for providing additional training under § 21.284(c) are met, the veteran can elect to receive the additional training needed for employment in the occupation specified in the plan.

However, if the veteran, without further assistance from VA, elects to broaden his or her employment search to include occupations to which the training already provided materially contributes, but which may not be in the field which was the original objective of the program, that is the individual's prerogative. If evaluation of the case then indicates that the veteran has successfully obtained employment which is consistent with his or her abilities, aptitudes, and interests, and requires no further VA assistance, VA should be able to consider that individual to have been successfully "rehabilitated." As noted, a case may be reopened if circumstances change and the individual then qualifies for additional assistance.

Comment. There is potential for abuse of entitlement for future veterans who experience worsening of their conditions to the point of acquiring an employment handicap, but who retain employment in "sheltered positions," e.g., family businesses and public service non-profit industries.

Response. The proposed changes do not affect the entitlement of service-disabled veterans who request assistance under the vocational rehabilitation program in the future. The criteria for entitlement to a program of rehabilitation services are statutory. Under these provisions, entitlement is the result of the existence of an employment handicap. Any individual who has such a handicap and is entitled by the law to receive vocational rehabilitation services will continue to receive these services to the same extent as at present. Being administratively declared to be "rehabilitated" is not necessarily a bar to future services. The conditions under which a veteran who has been declared "rehabilitated" may

be provided additional services are prescribed in § 21.284. Further, successful employment in a sheltered environment does not conclusively and irrevocably lead to the classification "rehabilitated" on the basis of being suitably employed. If the individual is found to have capacities which are beyond that level and is otherwise eligible for further VA assistance, the assistance will be offered.

Comment. The following scenario is presented as an example of how veterans programs would be adversely affected. A service-disabled veteran whose condition is evaluated at 50 percent disabling is found entitled to a program of rehabilitation services. The rehabilitation plans calls for training in culinary arts to provide the veteran with the skills needed to qualify for suitable employment. To supplement his income, the veteran takes a part-time job as a helper at his brother's hamburger stand. Sixty days later, VA can determine that he is rehabilitated because he obtained and retained employment in a closely related occupation.

Response. This scenario would not take place under the proposed regulatory changes. A veteran for whom a program of training in the culinary arts has been established is expected to pursue that training and VA will assist the veteran in doing so. If, as in the example, the veteran works part-time for his brother or anyone else to secure additional income to help him meet living expenses while pursuing the rehabilitation plan, this does not in any way affect the veteran's right to continue to participate in a VA rehabilitation plan. Taking a job to supplement one's income to continue to pursue a program in culinary arts indicates the veteran's commitment to the course he has selected and is reason for VA's continuing the training program rather than for any adverse action. This is not the case of an individual dropping out of the training program to take the hamburger stand job as his or her permanent vacation. The commenter's reference to completion of 60 days of successful employment is intended to refer to employment consistent with an individual's abilities, aptitudes, and interests. The part-time incidental employment postulated by the commenter clearly would not meet those criteria.

Comment. VA ostensibly could withdraw a veteran from training under the proposed regulations, during a period when the veteran is unable to factually demonstrate overcoming the employment handicap as specified in the proposal.

Response. The commenter's point is not clear, but it should be noted that once a finding of employment handicap has been made, no redetermination of that finding is made unless there was a clear and unmistakable error of fact or law in the original finding or unless the facts demonstrate that the employment handicap no longer exists. The proposed regulation does not, either in purpose or effect, allow VA to withdraw an individual from a rehabilitation program but merely to properly classify the individual's status thereunder. Thus, one who, having successfully obtained employment of a suitable nature, no longer requires nor seeks vocational rehabilitation services is "rehabilitated." In other words, the individual has successfully overcome his or her employment handicap by becoming suitably employed for a reasonable time.

Alternatives to the Proposed Regulatory Change

Comment. This proposal ignores the fact that employers, including the United States Government, place newly hired employees on probationary status for a period of 30, 60 or 90 days or more during which employment may be terminated without cause, but due to service-connected employment handicap. VA should permit receipt of full benefit entitlement and at least a one-year trial period to determine the veteran's successful readjustment to employment prior to rendering a determination of "rehabilitation" in any sense of the word.

Response. We agree that the veteran should be provided necessary followup services during the post-employment phase of the program to assure that there is a sound, stable adjustment to the demands of the employment situation before a finding of rehabilitation is made. Existing law and implementing regulations already provide for services which accomplish this goal. The changes do not diminish these provisions.

Both current provisions and proposed changes state that the veteran must be found adjusted in suitable employment for a period of at least 60 days. This provision gives the case manager substantial latitude in determining if these requirements for a finding of rehabilitation are met after 60 days or if a longer period is needed to make this decision. Continuation of such flexibility is more appropriate than the mandatory 1 year limit the commenter prefers.

The comments, objections and suggestions submitted do not provide a basis for a change in the regulatory

revisions which have been proposed. Consequently, these rules are adopted as final.

VA has determined that these amendments do not contain a major rule as that term is defined in Executive Order 12291, Federal Regulation. The amendments will not have a \$100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

These regulatory amendments are effective 30 days after the date of final publication in the **Federal Register**. The Secretary certifies that these amendments will not, if promulgated, 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), these rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that the amendments only affect individual beneficiaries. No new regulatory burdens are imposed on small entities by these amendments.

The Catalog of Federal Domestic Assistance number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 16, 1993.

Jesse Brown,
Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR, part 21, is amended as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

1. The authority citation for part 21, subpart A is revised to read as follows

Authority: 38 U.S.C. 501(a).

2. Section 21.194 is amended by revising paragraph (d) (1) and (2) to read as follows:

§ 21.194 "Employment services" status.

(d) *Termination of employment services status.*

(1) He or she is determined to be rehabilitated under the provisions of § 21.283; or

(2) He or she is:

(i) Employed for at least 60 days in employment that does not meet the criteria for rehabilitation contained in

§ 21.283, if the veteran intends to maintain this employment and declines further assistance; and

(ii) Adjusted to the duties and responsibilities of the job.

* * * * *
3. Section 21.196 is amended by revising paragraph (b) and the authority citation to paragraph (b) to read as follows:

§ 21.196 "Rehabilitated" status.

(b) *Assignment to "rehabilitated" status.* A veteran's case shall be assigned to "rehabilitated" status when his or her case meets the criteria for rehabilitation contained in § 21.283.
(Authority: 38 U.S.C. 3102, 3107 and 3117)

* * * * *
4. In part 21, subpart A, § 21.283 is added to read as follows:

§ 21.283 Rehabilitated.

(a) *General.* For purposes of chapter 31 a veteran shall be declared rehabilitated when he or she has overcome the employment handicap to the maximum extent feasible as described in paragraph (c), (d) or (e) of this section.

(Authority: 38 U.S.C. 3101 (1), (2))

(b) *Definition.* The term "suitably employed" includes employment in the competitive labor market, sheltered situations, or on a nonpay basis which is consistent with the veteran's abilities, aptitudes and interests if the criteria contained in paragraph (c) (1) or (2) of this section are otherwise met.

(Authority: 38 U.S.C. 3100)

(c) *Rehabilitation to the point of employability has been achieved.* The veteran who has been found rehabilitated to the point of employability shall be declared rehabilitated if he or she:

(1) Is employed in the occupational objective for which a program of services was provided or in a closely related occupation for at least 60 continuous days;

(2) Is employed in an occupation unrelated to the occupational objective of the veteran's rehabilitation plan for at least 60 continuous days if the veteran concurs in the change and such employment:

(1) Follows intensive, yet unsuccessful, efforts to secure employment for the veteran in the occupation objective of a rehabilitation plan for a closely related occupation contained in the veteran's rehabilitation plan;

(ii) Is consistent with the veterans' aptitudes, interests and abilities; and

(iii) Utilizes some of the academic, technical or professional knowledge and skills obtained under the rehabilitation plan; or

(3) Pursues additional education or training, in lieu of obtaining employment, after completing his or her prescribed program of training and rehabilitation services if:

(i) The additional education or training is not approvable as part of the veteran's rehabilitation program under this chapter; and

(ii) Achievement of employment consistent with the veterans's aptitudes, interests, and abilities will be enhanced by the completion of the additional education or training.

(Authority: 38 U.S.C. 3101(1), 3107 and 3117)

(d) *Rehabilitation to the point of employability has not been completed.* A veteran under a rehabilitation plan who obtains employment without being declared rehabilitated to the point of employability as contemplated by the plan, including a veteran in a rehabilitation program consisting solely of employment services, is considered to be rehabilitated if the following conditions exist:

(1) The veteran obtains and retains employment substantially using the services and assistance provided under the plan for rehabilitation.

(2) The employment obtained is consistent with the veterans's abilities, aptitudes and interests.

(3) Maximum services feasible to assist the veteran to retain the employment obtained have been provided.

(4) The veteran has maintained the employment for at least 60 continuous days.

(Authority: 38 U.S.C. 3101(1), 3107 and 3117)

(e) *Independent living.* A veteran who has pursued a program of independent living services will be considered rehabilitated when all goals of the program have been achieved, or if not achieved, when:

(1) The veteran, nevertheless, has attained a substantial increase in the level of independence with the program assistance provided;

(2) The veteran has maintained the increased level of independence for at least 60 days; and

(3) Further assistance is unlikely to significantly increase the veteran's level of independence.

(Authority: 38 U.S.C. 3101 (1), (2) 3107)

§ 21.284 [Amended]

5. In § 21.284, the introductory text to paragraph (a) is amended by removing

the reference to "§ 21.196" and adding in its place "§ 21.283."

[FR Doc. 93-31782 Filed 12-29-93; 8:45 am]

BILLING CODE 8320-21-U-M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 607

Claims Collection; Salary Offset

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: This regulation implements the Debt Collection Act of 1982, as amended, which authorizes the Federal government to collect debts owed by a Federal employee to the United States through salary offset.

DATES: This regulation will be effective on December 29, 1993.

ADDRESSES: For additional information contact Jesse E. Lasken, Assistant General Counsel, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230 (Telephone: 202-357-9435) or Amy Tsai, Division of Financial Management, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230 (Telephone: 703-306-1282).

FOR FURTHER INFORMATION CONTACT: Jesse E. Lasken or Amy Tsai at the addresses or phone numbers above.

SUPPLEMENTARY INFORMATION: Under the Debt Collection Act of 1982, when the head of a Federal agency or his or her designee determines that an employee of an agency is indebted to the United States or is notified by a head of another Federal agency that an agency employee is indebted to the United States, the employee's debt may be offset against his or her salary. Certain due process rights must be afforded to an employee before salary offset deductions begin. As is required by the Debt Collection Act of 1982, this regulation is consistent with salary offset regulations issued by the Office of Personnel Management, 5 CFR part 550, subpart K and was approved by the Office of Personnel Management pursuant to section 8(1) of Executive Order 12107.

No comments were received as a result of the notice of the proposed regulation published on September 2, 1993 at pages 46597-46600 of Volume 58, No. 169 of the *Federal Register* and no changes have been made to the proposed rule published there.

Paperwork Reduction Act

This regulation does not include provisions for information collection that require review and approval by the

Office of Management and Budget under section 3518 of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and 5 CFR part 1320.

Regulatory Flexibility Act

The Director of NSF 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. This rule applies only to individual Federal employees. Accordingly, no regulatory flexibility analysis is required.

Executive Order 12291

This rule is not a "major rule" as defined under Executive Order 12291 and no regulatory impact analysis is required.

List of Subjects in 45 CFR Part 607

Administrative offset, Administrative practice and procedures, Claims, Debt collection, Government employees, Wages.

Authority: 5 U.S.C. 5514, E.O. 11809 (redesignated E.O. 12107), and 5 CFR part 550, subpart K.

Neal Lane,
Director.

For the reasons set out in the preamble, part 607 of title 45 of the Code of Federal Regulations is added to read as follows:

PART 607—SALARY OFFSET

- 607.1 Purpose and scope.
- 607.2 Definitions.
- 607.3 Applicability.
- 607.4 Notice requirements before offset.
- 607.5 Hearing.
- 607.6 Written decision.
- 607.7 Coordinating offset with another Federal agency.
- 607.8 Procedures for salary offset.
- 607.9 Refunds.
- 607.10 Statute of limitations.
- 607.11 Non-waiver of rights.
- 607.12 Interest, penalties, and administrative costs.

Authority: 5 U.S.C. 5514; E.O. 12107, 3 CFR, 1978 Comp., p. 264; 5 CFR part 550, subpart K.

§ 607.1 Purpose and scope.

(a) This part provides procedures for the collection by administrative offset of a federal employee's salary without his or her consent to satisfy certain debts owed to the Federal government. This part applies to all Federal employees who owe debts to the National Science Foundation (NSF) and to current employees of NSF who owe debts to other Federal agencies. This part does not apply when the employee consents to recovery from his or her current pay account.

(b) This part does not apply to debts or claims arising under: (1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 *et seq.*; (2) the Social Security Act, 42 U.S.C. 301 *et seq.*; (3) the tariff laws of the United States; or (4) any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) This part does not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This part does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711 *et seq.*, and 4 CFR parts 101 through 105.

(e) This part does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office. This part does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(f) Matters not addressed in this part should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 *et seq.*

§ 607.2 Definitions.

For the purposes of this part the following definitions will apply:

Agency means an executive agency as defined at 5 U.S.C. 105, including the U.S. Postal Service and the U.S. Postal Rate Commission; a military department as defined at 5 U.S.C. 102; an agency or court in the judicial branch; an agency of the legislative branch, including the U.S. Senate and House of Representatives; and other independent establishments that are entities of the Federal government.

Certification means a written debt claim received from a creditor agency which requests the paying agency to offset the salary of an employee.

Chief Financial Officer means the Chief Financial Officer of NSF or such other official of NSF who is designated by the Chief Financial Officer to determine whether an employee is indebted to the United States and to take action to collect such debts.

Creditor agency means an agency of the Federal Government to which the debt is owed.

Debt means an amount owed by a Federal employee to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

Disposable pay means the amount that remains from an employee's Federal pay after required deductions for social security, Federal, State or local income tax, health insurance premiums, retirement contributions, life insurance premiums, Federal employment taxes, and any other deductions that are required to be withheld by law.

Hearing official means an individual responsible for conducting a hearing with respect to the existence or amount of a debt claimed, or the repayment schedule of a debt, and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Chief Financial Officer or of persons having supervision or control over the Chief Financial Officer.

NSF means the National Science Foundation.

Paying agency means the agency that employs the individual who owes the debt and authorizes the payment of his or her current pay.

Salary offset means an administrative offset to collect a debt pursuant to 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

§ 607.3 Applicability.

The regulations in this part are to be followed when:

(a) NSF is owed a debt by an individual who is a current employee of the NSF; or

(b) NSF is owed a debt by an individual currently employed by another Federal agency; or

(c) NSF employs an individual who owes a debt to another Federal agency.

§ 607.4 Notice requirements before offset.

(a) Salary offset shall not be made against an employee's pay unless the employee is provided with written notice signed by the Chief Financial Officer of the debt at least 30 days before salary offset commences.

(b) The written notice shall contain:

(1) A statement that the debt is owed and an explanation of its nature and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards at 4 CFR 101.1;

(5) The employee's right to inspect, request, and receive a copy of government records relating to the debt;

(6) The employee's opportunity to establish a written schedule for the voluntary repayment of the debt in lieu of offset;

(7) The employee's right to an oral hearing or a determination based on a review of the written record ("paper hearing") conducted by an impartial hearing official concerning the existence or the amount of the debt, or the terms of the repayment schedule;

(8) The procedures and time period for petitioning for a hearing;

(9) A statement that a timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing (if requested) will be issued by the hearing official not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that knowingly false or frivolous statements, representations, or evidence may subject the employee to appropriate disciplinary procedures and/or statutory penalties;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and

(14) A statement that the proceedings regarding such debt are governed by section 5 of the Debt Collection Act of 1982 (5 U.S.C. 5514).

§ 607.5 Hearing.

(a) *Request for hearing.* (1) An employee may file a petition for an oral or paper hearing in accordance with the instructions outlined in the agency's notice to offset.

(2) A hearing may be requested by filing a written petition addressed to the Chief Financial Officer stating why the employee disputes the existence or amount of the debt or, in the case of an individual whose repayment schedule has been established other than by a written agreement, concerning the terms of the repayment schedule. The petition for a hearing must be received by the Chief Financial Officer not later than fifteen (15) calendar days after the employee's receipt of the offset notice, or notice of the terms of the payment schedule, unless the employee can show good cause for failing to meet the filing deadline.

(b) *Hearing procedures.* (1) The hearing will be presided over by an impartial hearing official.

(2) The hearing shall conform to procedures contained in the Federal Claims Collection Standards, 4 CFR 102.3(c). The burden shall be on the employee to demonstrate that the existence or the amount of the debt is in error.

§ 607.6 Written decision.

(a) The hearing official shall issue a final written opinion no later than 60 days after the filing of the petition.

(b) The written opinion will include a statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings, and conclusions; the amount and validity of the debt, if any; and the repayment schedule, if any.

§ 607.7 Coordinating offset with another Federal agency.

(a) When the NSF is the creditor agency and the Chief Financial Officer determines that an employee of another agency (i.e., the paying agency) owes a debt to the NSF, the Chief Financial Officer shall, as appropriate:

(1) Certify in writing to the paying agency that the employee owes the debt, the amount and basis of the debt, the date on which payment was due, and the date the Government's right to collect the debt accrued, and that this part 607 has been approved by the Office of Personnel Management.

(2) Unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of the required procedures, and the written consent is sent to the paying agency, the Chief Financial Officer must advise the paying agency of the action(s) taken under this part 607, and the date(s) they were taken.

(3) Request the paying agency to collect the debt by salary offset. If deductions must be made in installments, the Chief Financial Officer

may recommend to the paying agency the amount or percentage of disposable pay to be collected in each installment;

(4) Arrange for a hearing upon the proper petitioning by the employee.

(b) When the NSF is the creditor agency and the employee is in the process of separating from the Federal service, the NSF must submit its debt claim to the paying agency as provided in this part. The paying agency must certify the total amount collected, give a copy of the certification to the employee, and send a copy of the certification and notice of the employee's separation to the NSF. If the paying agency is aware that the employee is entitled to Civil Service Retirement and Disability Fund or other similar payments, it must certify to the agency responsible for making such payments that the debtor owes a debt, including the amount of the debt, and that the provisions of 5 CFR 550.1108 have been followed.

(c) When the NSF is the creditor agency and the employee has already separated from Federal service and all payments due from the paying agency have been paid, the Chief Financial Officer may request, unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset.

(d) When the NSF is the paying agency, upon receipt of a properly certified debt claim from another agency, deductions will be scheduled to begin at the next established pay interval. The employee must receive written notice that NSF has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). NSF shall not review the merits of the creditor agency's determination of the validity or the amount of the certified claim. If the employee transfers to another agency after the creditor agency has submitted its debt claim to NSF and before the debt is collected completely, NSF must certify the amount collected. One copy of the certification must be furnished to the employee. A copy must be furnished to the creditor agency with notice of the employee's transfer.

§ 607.8 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Chief Financial Officer's notice of intention to offset as provided in § 607.4. Debts will be collected in one lump sum where possible. If the employee is financially

unable to pay in one lump sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay intervals for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Unliquidated debts may be offset against any financial payment due to a separated employee including but not limited to final salary or leave payment in accordance with 31 U.S.C. 3716.

§ 607.9 Refunds.

(a) NSF will promptly refund to an employee any amounts deducted to satisfy debts owed to NSF when the debt is waived, found not owed to NSF, or when directed by an administrative or judicial order.

(b) Another creditor agency will promptly return to NSF any amounts deducted by NSF to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(c) Unless required by law, refunds under this section shall not bear interest.

§ 607.10 Statute of limitations.

If a debt has been outstanding for more than 10 years after NSF's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 607.11 Non-waiver of rights.

An employee's involuntary payment of all or any part of a debt collected under the regulations in this part will not be construed as a waiver of any rights that the employee may have under 5 U.S.C. 5514 or any other provision of law.

§ 607.12 Interest, penalties, and administrative costs.

Charges may be assessed on a debt for interest, penalties, and administrative costs in accordance with 31 U.S.C. 3717

and the Federal Claims Collection Standards, 4 CFR 101.1.

[FR Doc. 93-31593 Filed 12-28-93; 8:45 am]
BILLING CODE 7555-01-P

45 CFR Part 608

Claims Collection; Administrative Offset

AGENCY: National Science Foundation.
ACTION: Final rule.

SUMMARY: This regulation implements the claims and debt collection procedures of the Debt Collection Act of 1982. Subject to various limitations and due process requirements, the Act authorizes agencies to seek collection of claims, to report claims to consumer reporting agencies, to compromise claims, to administratively offset claims, and to offset claims against tax refunds. **DATES:** This regulation will be effective on December 29, 1993.

ADDRESSES: For additional information contact Jesse E. Lasken, Assistant General Counsel, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230 (Telephone: 202-357-9435) or Amy Tsai, Division of Financial Management, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230 (Telephone: 703-306-1282).

FOR FURTHER INFORMATION CONTACT: Jesse E. Lasken or Amy Tsai at the addresses or phone numbers above.

SUPPLEMENTARY INFORMATION: This regulation and a related regulation at 45 CFR part 607 implementing the salary offset provisions at 5 U.S.C. 5514 provide a regulatory framework under which NSF can effectively utilize the authorities of 31 U.S.C. 3711, 3716, 3718 and 3720A and participate in various interagency cooperative programs designed to improve the ability of Federal agencies to collect debts owing to them with due regard to appropriate procedural safeguards. 31 U.S.C. 3711 and 3716 require agencies to issue regulations. The Department of the Treasury also requires agencies to issue a regulation in order to utilize the Federal Tax Refund Offset Program established pursuant to 31 U.S.C. 3720A. By this regulation and delegations under related statutes not covered by this regulation, the implementation of NSF's debt collection program and the exercise of the authority granted by the statutes will be delegated by the Director of NSF to its Chief Financial Officer.

No comments were received as a result of the notice of the proposed

regulation published on September 2, 1993 at pages 46600-46602 of Volume 58, No. 169 of the Federal Register and no changes have been made to the proposed rule published there.

Paperwork Reduction Act

This regulation does not include provisions for information collection that require review and approval by the Office of Management and Budget Under section 3518 of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and 5 CFR part 1320.

Regulatory Flexibility Act

The Director of NSF 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. NSF data indicates that a very small debt is owed to NSF. Hence, this regulation will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96-354, 5 U.S.C. 605(b). Accordingly, no regulatory flexibility analysis is required.

Executive Order 12291

This rule is not a "major rule" as defined under Executive Order 12291 and no regulatory impact analysis is required.

List of Subjects in 45 CFR Part 608

Administrative offset, Administrative practice and procedures, Claim collection, Debt collection, and Tax refund offset.

Authority: 31 U.S.C. 3711, 3716, 3718 and 3720A.

Neal Lane,
Director.

For the reasons set out in the preamble, part 608 of title 45 of the Code of Federal Regulations is added to read as follows:

PART 608—CLAIMS COLLECTION AND ADMINISTRATIVE OFFSET

- 608.1 Purpose and scope.
- 608.2 Collection, compromise, and use of consumer reporting agencies
- 608.3 Administrative offset
- 608.4 Reductions of tax refunds

Authority: 31 U.S.C. 3711, 3716, 3718 and 3720A.

§ 608.1 Purpose and scope.

(a) This part sets forth policies and procedures for the collection and compromise claims and the administrative offset of claims by the National Science Foundation (NSF)

pursuant to 31 U.S.C. 3711, 3716, 3718 and 3720A. It is not intended to limit or govern the rights of the NSF or the United States to collect, compromise, or administratively offset debts or claims under other authority and procedures that may be legally available to it.

(b) Matters not addressed in this part should be reviewed and handled in accordance with applicable statutory provisions and the Federal Claims Collection Standards issued jointly by the Attorney General and the Comptroller General (4 CFR parts 101 through 105).

(c) Any action other than the issuance of regulations specifically required to be done by the head of the agency by any of the statutes or regulations referred to in paragraphs (a) and (b) of this section shall be done on behalf of NSF by its Chief Financial Officer or by those to whom the Chief Financial Officer delegates authority. This is not intended to prevent the Chief Financial Officer from issuing additional internal procedures and guidance consistent with this part.

§ 608.2 Collection, compromise, and use of consumer reporting agencies.

(a) Subject to the specific limitations and procedures of 31 U.S.C. 3711 and in accordance with the applicable provisions of the Federal Claims Collection Standards, NSF, acting through its Chief Financial Officer or those to whom he or she delegates authority or assigns responsibilities, shall try to collect claims of the United States Government for money or property arising out of the activities of NSF or that are referred to NSF and may compromise or suspend or end collection action of certain claims. In making demands for payment, NSF will follow the guidance set forth at 4 CFR 102.2. In appropriate cases, as authorized by and subject to 31 U.S.C. 3718 and 4 CFR 102.6, NSF may contract for collection services. Before compromising or suspending or ending the collection of a claim in excess of \$5,000, the matter shall be referred to the NSF Office of General Counsel for legal review.

(b) When trying to collect a claim of the Government (except for claims under the Internal Revenue Code of 1986, 26 U.S.C. 1 *et seq.*), NSF may disclose to a consumer reporting agency information from a system of records that an individual is responsible for a claim if (1) a notice published pursuant to 5 U.S.C. 552a(3)(4) indicates that information in the system of records may be disclosed to a consumer reporting agency that an individual is

responsible for a claim and (2) if the Chief Financial Officer of NSF decides that the claim is valid and overdue. Such disclosures to a consumer reporting agency will be done only under the conditions and procedures specified in 31 U.S.C. 3711(f) and in the Federal Claims Collections Standards. Specifically, before NSF provides the information to the consumer reporting agency, the individual will be given the notice required by 31 U.S.C. 3711(f)(1)(C); and in accordance with 4 CFR 102.5(c), the right of administrative review to be provided to the individual shall be consistent with the provisions of 4 CFR 102.3(c). If NSF does not have a current address for the individual in its files, it will take reasonable action to locate the individual, but if unsuccessful will mail the notice to the individual's last known address. NSF will disclose information only to a consumer reporting agency that gives satisfactory assurances that it is complying with all laws of the United States relating to providing consumer credit information. The information provided by NSF shall be limited to the type of information described in 31 U.S.C. 3711(f)(1)(F). Moreover, NSF will not provide such information until it has established internal procedures to disclose promptly to a consumer reporting agency to which disclosure is made of any substantial changes in the condition or amount of the claim and to verify or correct promptly information about the claim on request of a consumer reporting agency for verification of information disclosed.

(c) If in response to the notice referred to in paragraph (b) of this section, the individual repays or agrees in writing with NSF to a repayment plan, the information will not be disclosed to a consumer reporting agency. If in response to the notice referred to in paragraph (b) the individual requests a review or reconsideration of the claim, information shall not be disclosed to the consumer reporting agency until such a review is provided.

(d) The review referred to in paragraph (c) of this section shall be based only on the written documentation in the file, including any additional written information provided by the individual in response to the notice referred to in paragraph (b). A written summary briefly describing the nature of the review performed and the conclusion reached shall be made. The written summary and conclusion shall be referred to the NSF Office of General Counsel for legal review. After legal review, a copy of the written summary shall be sent to the individual.

§ 608.3. Administrative offset.

(a) If NSF is unable to collect a claim from a person after trying to do so in accordance with § 608.2, NSF may collect the claim by administrative offset subject to the procedures and limitations of 31 U.S.C. 3716 and the applicable provisions of the Federal Claims Collection Standards. Determinations to pursue administrative offset shall be made on a case-by-case basis taking into account the considerations specified at 31 U.S.C. 3716(b) and 4 CFR 102.3(a). Before employing administrative offset, NSF will comply with the notice, hearing, review, or other procedural requirements of 31 U.S.C. 3716(a) and 4 CFR 102.3(b) and (c). Furthermore, before an administrative offset is taken by NSF pursuant to the authority of this part 608, the matter shall be referred to the Office of General Counsel for legal review to ensure that the required procedures have been followed.

(b) When another agency requests NSF to administratively offset a claim owing to that agency, NSF will normally comply with such request if the requesting agency has provided the certification required by 4 CFR 102.3(f) and offset would not be contrary to law. Before imposing administrative offsets at the request of another agency under this part 608, the matter shall be referred to the NSF Office of General Counsel for legal review.

(c)(1) In appropriate cases, NSF may request another agency to administratively setoff a claim owed to NSF. Before making the certification to the other agency required by 4 CFR 102.3(f), the matter shall be referred to the NSF Office of General Counsel for legal review.

(2) Unless otherwise prohibited by law, NSF may request that moneys that are due and payable to a debtor from the Civil Service Retirement and Disability Fund, the Foreign Service Retirement Fund or any other Federal retirement fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments debts owed the United States by the debtor. Such requests shall be made to the appropriate officials of the respective fund servicing agency in accordance with such regulations as may be prescribed by that agency. The requests for administrative offset will certify in writing that (i) the debtor owes the United States a debt and the amount of the debt; (ii) NSF has complied with applicable regulations and procedures; and (iii) NSF has followed the requirements of the Federal Claims Collection Standards as made applicable

by this section. Once NSF decides to request offset from a Federal retirement fund, it will make the request as soon as practical after completion of the applicable procedures in order that the fund servicing agency may identify and flag the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the fund and to ensure that offset will be initiated prior to the expiration of the statute of limitations.

(3) If NSF collects part or all of the debt by other means before deductions are made or completed pursuant to this paragraph (c), NSF shall act promptly to modify or terminate its request for offset.

(4) This paragraph (c) does not require or authorize the fund servicing agency to review the merits of (i) NSF's determination with respect to the amount and validity of the debt, (ii) NSF's determination as to waiver under an applicable statute, or (iii) NSF's determination to provide or not provide an oral hearing.

(d) No collection by administrative offset shall be made on any debt that has been outstanding for more than ten years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering the debt.

(e) Administrative offset under this section will not be initiated against:

(1) A debt in which administrative offset of the type of debt involved is explicitly provided for or prohibited by a statute other than 31 U.S.C. 3716, including debts subject to the Salary offset procedures at 45 CFR part 607;

(2) Debts owed by other agencies of the United States or by any State or local Government; or

(3) Debts arising under the Internal Revenue Code of 1954; the Social Security Act; or the tariff laws of the United States.

§ 608.4 Reductions of tax refunds.

(a) In accordance with regulations and guidance issued by the Secretary of the Treasury at 26 CFR 301.6402-6 and the requirements of 31 U.S.C. 3720A, NSF will participate in the Federal Tax Refund Offset Program for offset against income tax refunds of persons owing past due legally enforceable debts to NSF.

(b) For purposes of this section, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Except in the case of a judgment debt, has been delinquent for at least three months but has not been

delinquent for more than ten years at the time the offset is made;

(2) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(3) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by NSF against amounts payable to or on behalf of the debtor by or on behalf of NSF;

(4) With respect to which NSF has notified or has made a reasonable attempt to notify the taxpayer that the debt is past-due and, unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax;

(5) With respect to which NSF has given the taxpayer at least 60 days from the date of notification to present evidence that all or part of the debt is not past-due or legally enforceable, has considered the evidence presented by such taxpayer, and has determined that an amount of such debt is past-due and legally enforceable;

(6) Has been disclosed by NSF to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless a consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed \$100.00;

(7) Is at least \$25.00;

(8) All other requirements of 31 U.S.C. 3720A and the Internal Revenue Service regulations at 26 CFR 301.6402-6 relating to the eligibility of a debt for tax return offset have been satisfied.

(c) NSF will make a request for reduction of an IRS tax refund only after the NSF determines that an amount is owed and past-due and provides the debtor with 60 days written notice. NSF's notice of intention to collect by IRS tax refund offset (Notice of Intent) will state:

(1) The amount of the debt;

(2) That unless the debt is repaid within 60 days from the date of the NSF's Notice of Intent, NSF intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as refunds of Federal taxes paid by an amount equal to the amount of the debt and all accumulated interest and other charges;

(3) That the debtor has a right to present evidence that all or part of the debt is not past-due or legally enforceable; and

(4) A mailing address for forwarding any written correspondence and a contact name and phone number for any questions.

(d) A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past-due or not legally enforceable. To exercise this right, the debtor must:

(1) Send a written request for a review of the evidence to the address provided in the notice.

(2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable.

(3) Include with the request any documents which the debtor wishes to be considered or state that additional information will be submitted within the remainder of the 60-day period.

(e) The failure of a debtor to respond as provided in paragraph (d) of this section will result in an automatic referral of the debt to the IRS without further action by NSF. If the debtor responds, NSF will consider all available evidence related to the debt and issue a written determination, including supporting rationale, whether its prior determination that the debt is past-due and legally enforceable is sustained, amended, or canceled. Before this determination is made the matter shall be referred to the NSF Office of General Counsel for legal review. NSF will give prompt notification of this determination to the debtor.

[FR Doc. 93-31592 Filed 12-28-93; 8:45 am]
BILLING CODE 7555-01-M

DEPARTMENT OF JUSTICE

48 CFR Parts 2801, 2802, 2806, and 2807

Justice Acquisition Circular 94-1; Amendment to the Justice Acquisition Regulations (JAR) Regarding: Contracting Authority and Responsibilities, Definitions, Competition Advocates, and Acquisition Planning

AGENCY: Office of the Procurement Executive, Justice Management Division, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the JAR by prescribing new policies and procedures for redelegation of authority for contractual actions of goods and services and acquisitions by lease or purchase of any interest in real property; removing regulations on modifying delegation documents; revising regulations to reflect new policies and procedures for reviews of contractual actions conducted by the Office of the Procurement Executive; revising regulations to set forth the

Department of Justice system for selection, appointment, and termination of appointment of contracting officers; redefining an existing contracting activity and incorporating an additional contracting activity; incorporating existing agency policy and procedures concerning Competition Advocates; and incorporating existing agency policy and procedures regarding Acquisition Planning.

EFFECTIVE DATE: December 29, 1993.

FOR FURTHER INFORMATION CONTACT: W.L. Vann, Procurement Executive, Justice Management Division (202) 514-6868.

SUPPLEMENTARY INFORMATION: The determination is hereby made that this amendment must be issued as a final rule. This amendment was not published for public comment because it does not have an effect beyond the internal operating procedures of the agency. The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted agency procurement regulations from review under Executive Order 12291, except for selected areas. The exception applies to this rule. The Department of Justice certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601-612) because the amendment sets forth, wholly, internal departmental procedures. No additional time or cost burden will be placed on contractors by the promulgation of this regulation.

List of Subjects in 48 CFR Part 2801, 2802, 2806, and 2807

Government procurement.
Stephen R. Colgate,
Assistant Attorney General for
Administration.

1. The authority citation for 48 CFR part 2801, 2802, 2806, and 2807 continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATIONS SYSTEM

2. Section 2801.601 is revised to read as follows:

2801.601 General.

(a) In accordance with Attorney General Order 1687-93, the authority vested in the Attorney General with respect to contractual actions, for goods and services, is delegated to the following officials:

(1) Assistant Attorney General for Administration (for the offices, boards, and divisions (OBDs);

(2) Director, Federal Bureau of Investigation;

(3) Director, Bureau of Prisons;

(4) Commissioner, Federal Prison Industries;

(5) Commissioner, Immigration and Naturalization Service;

(6) Administrator, Drug Enforcement Administration;

(7) Assistant Attorney General, Office of Justice Programs;

(8) Director, U.S. Marshals Service;

(9) Director, National Institute of Corrections; and

(10) Inspector General

(b) In accordance with Attorney General Order 1688-93, the authority vested in the Attorney General with respect to acquisition by lease or purchase of any interest in real property has been redelegated to the Assistant Attorney General for Administration.

(1) The following authorities have been redelegated to the Director, Facilities and Administrative Services Staff, JMD, for the efficient and proper administration of the Department's real property operations:

(i) Acquire by lease or purchase any interest in real property for all components of the Department of Justice.

(ii) Secure delegations of lease acquisition authority from GSA for all components of the Department.

(iii) Approve ratification requests of \$5,000 or less with respect to interests in real property.

(iv) Only the authority contained in paragraph (b)(1)(i) of this section may be redelegated.

(2) Authority contained in paragraph (b)(1)(i) is redelegated to the heads of Bureaus, as defined in the Order as follows:

(i) Assistant Attorney General for Administration (for the offices, boards, divisions, United States Attorneys, and United States Trustees);

(ii) Director, Federal Bureau of Investigation;

(iii) Director, Bureau of Prisons;

(iv) Commissioner, Federal Prison Industries, Inc.;

(v) Commissioner, Immigration and Naturalization Service;

(vi) Administrator, Drug Enforcement Administration;

(vii) Assistant Attorney General, Office of Justice Programs;

(viii) Director, United States Marshals Service; and

(ix) Inspector General, Office of the Inspector General.

(c) The acquisition authority delegated to the officials in 2801.601 (a)

and (b)(2) may be redelegated to subordinate officials as necessary for the efficient and proper administration of the Department's acquisition operations. Such redelegated authority shall expressly state whether it carries the power of redelegation and the limits, if any, of the redelegation of authority.

(d)(1) Contracting officer authority to other than those positions expressly identified in paragraphs (a)(1) through (a)(10) of this section for goods and services shall be redelegated only to subordinate individuals who:

(i) Are employed in the 1100 personnel classification series, have met the requirements of § 2801.603 and have been certified as competent by the Bureau Director or designee, in accordance with the Certification Program required by OFPP Policy Letter 92-3, Procurement Professionalism Program Policy—Training for Contracting Personnel; or,

(ii) Must function as contracting officers for goods and services in the performance of their duties, have met the requirements of § 2801.603 and have been certified as competent by the Bureau Director or designee, in accordance with the Certification Program required by OFPP Policy Letter 92-3, Procurement Professionalism Program Policy—Training for Contracting Personnel; except that,

(iii) Authority to make small purchases for goods and services may be redelegated to subordinate individuals not classified in the 1100 series provided,

(A) That the office(s) they serve would otherwise be without supply support for their immediate needs or the individuals are being authorized to place delivery orders or similar instruments against established DOJ or other agency contracts; and,

(B) The individuals have been adequately instructed in the regulations concerning small purchases and have been certified as competent by the Bureau Director or designee, in accordance with the Certification Program required by OFPP Policy Letter 92-3, Procurement Professionalism Program Policy—Training for Contracting Personnel.

(2) Real property contracting authority may be redelegated to individuals not in the 1100 series, provided that the qualification requirements stated in 2801.603-2(d)(2) are met.

(3) The redelegation of contracting authority directly to specific persons without regard for intermediate organizational levels only establishes authority to represent the Government in its commercial business dealings. It is not intended to affect the organizational

relationship between the contracting officers and higher administrative and supervisory levels in the performance of their duties.

(e) When exercising delegated contracting officer authority, a designated employee shall be identified as the contracting officer and shall function within the limits prescribed by law, the FAR, the JAR, and his/her delegation of contracting authority. Additionally, real property contracting officers shall be subject to the GSAR and the JPMR.

(f) A contracting officer shall maintain evidence of his/her delegation of authority and while functioning as a contracting officer, shall make such evidence available upon request.

2801.601-70 [Removed]

3. Section 2801.601-70 is removed.

4. Section 2801.602-70 is revised to read as follows:

2801.602-70 Office of the Procurement Executive.

(a)(1) The contracting officer shall forward the proposed contract action to the Office of the Procurement Executive for review prior to execution of any contractual action which:

(i) Exceeds \$50,000 and was solicited using other than full and open competition procedures, including amendments or modifications to these contracts which cause the total contract costs to exceed \$50,000;

(ii) Exceeds \$100,000, and was solicited using full and open competition procedures, including amendments or modifications to these contracts which cause the total contract costs to exceed \$100,000; or

(iii) Is evaluated on the basis of system life costs and/or is evaluated on the basis of option pricing regardless of dollar value;

(2) For the purposes of this section contractual actions include all pre-award, award, and post-award contractual actions above the thresholds in paragraphs (a)(1) (i) through (iii) including, but not limited to modifications, ratifications, and options, but excluding orders from Federal Supply Schedules and orders from Basic Ordering Agreements. Review by the Office of the Procurement Executive is applicable to all organization elements in the Department, with the exception of the FBI as noted in this section. It is the responsibility of the FBI's Contract Review Board to ensure that procurement actions for goods and services are awarded in conformity with applicable statutes, regulations, and procedures. This exemption, however, does not exempt the FBI from the

review by the Office of the Procurement Executive of all real property procurement actions above the thresholds cited in paragraphs (a)(1) (i) through (iii) of this section, or from other oversight responsibilities of the Office of the Procurement Executive, including Procurement Executive review and approval of justifications for other than full and open competition on contracts over \$10 million.

(b) Prior to submission to the Procurement Executive, the legal officer for each Bureau procurement activity is responsible for reviewing and approving all such procurement actions for legal sufficiency.

(c) The AAG/A and/or the Procurement Executive may waive any requirements for preaward contract review, except those imposed by statute. Requests for waivers shall be submitted to the Procurement Executive in accordance with paragraph (d) of this section.

(d) A request for a waiver must be submitted in writing by the head of the contracting activity and include a detailed explanation as to why a waiver is required, as well as information explaining reasons why a contract or class of contracts cannot be reviewed on a preaward basis. Oral waivers may be requested and granted under circumstances of compelling urgency, but written documentation of the waiver shall be made as soon as time permits. All contract documents that are available at the time a waiver request is made must accompany the request for review. All available documents will be reviewed to assure that the award is legally sufficient prior to the granting of a waiver. A postaward review of the completed contract file is required. Waivers will not be granted near the end of a fiscal year for the purpose of obligating year end funds.

(e) In accordance with Attorney General Orders 1687-93 and 1688-93, the head of a Bureau may appeal a decision of the Procurement Executive to the Contract Appeals Panel (Panel), in writing, within 15 calendar days after receipt of the decision of the Procurement Executive. The Panel shall be composed of the Deputy Attorney General who shall serve as chairperson, the Associate Attorney General and the Assistant Attorney General for Administration. The Panel shall meet on an ad hoc basis as necessary and determined by the chairperson. When appealing a decision of the Procurement Executive, the head of the Bureau shall follow the procedures described in paragraphs (e) (1) through (4) of this section.

(1) The appeal file shall be submitted through the Office of the Procurement Executive (OPE) to the Deputy Attorney General as Chairperson of the Contract Appeals Panel. Submission of the appeal through the OPE is required so that the Procurement Executive may provide a written response to the issues raised in the appeal and, due to the ad hoc nature of the Contract Appeals Panel, provide a location for the collection and maintenance of appeal documents and files. The Procurement Executive shall forward the appeal file to the Chairperson within five working days of receipt.

(2) *Content of the appeal file.* The appeal file must be complete in that it fully addresses the issue(s) being appealed. The file shall include a copy of the proposed contract or other award action, documents relied upon by the contracting officer in taking the action under dispute, the Procurement Executive's decision and a statement of facts setting forth the basis on which the appeal is made. The statement of facts shall cite, where applicable, procurement regulations, statutes, or decisions by other authorities, such as GAO decisions, that support or form the basis of the appeal. A summary shall be provided stating the resolution requested by the Bureau. An original and three copies of the appeal file shall be submitted.

(3) The head of the Bureau shall also submit to the OPE, with the appeal file, the original contract file as submitted to the OPE for review.

(4) The Contract Appeals Panel, following review and consideration of the appeal shall issue its decision in writing to the head of the Bureau through the Office of the Procurement Executive and return, with the decision, all documents submitted by the Bureau. Unless the Attorney General directs that the matter be referred to him/her, the decision of the Panel will be the final Department of Justice position as to whether a particular procurement action complies with the applicable statute, regulation, policy or procedure.

(f) The Procurement Executive is authorized to review any procurement actions, including real property procurement actions, throughout the Department and direct that such corrective action be taken as the Procurement Executive deems necessary, and to inspect at any time the procurement operations of any component of the Department.

5. Section 2801.603 is revised to read as follows:

2801.603 Selection, appointment and termination of appointment.

2801.603-2 Selection.

(a) *Policy.* It is the Department's objective in issuing contracting officer Certificates of Appointment, SF 1402s, to ensure that only those officials who are fully qualified to obligate the Government for the expenditure of public funds are appointed as contracting officers.

(b) *Appointment levels.* There are four levels of authority as follows:

(1) *Level I:* Applies to personnel who have been delegated contracting authority at or under the small purchases threshold, or with authority to place delivery orders at any dollar level.

(2) *Level II:* Applies to personnel who have been delegated contracting authority up to a maximum of \$100,000.

(3) *Level III:* Applies to personnel who have been delegated contracting authority up to a maximum of \$500,000.

(4) *Level IV:* Applies to all personnel who have been delegated contracting authority which exceeds \$500,000.

(c) *Selection procedures.* (1) Once the organizational need is determined, the supervisor will nominate a contracting officer candidate. The supervisor shall submit, through appropriate bureau channels, a qualification statement to the bureau official authorized to grant the delegation of procurement authority. The qualification statement must include, as applicable, a copy of the employee's most recently completed Individual Development Plan (IDP), a Certificate of Competency, and an updated SF-171 or equivalent which contains the following information:

- (i) Name;
- (ii) Title, series, grade;
- (iii) Office;
- (iv) Education, including—
 - (A) Highest level completed;
 - (B) College or university name;
 - (C) Degree received;
 - (D) Chief undergraduate/graduate college subject;
 - (v) Experience.

(2) Upon review and determination that the applicant meets the required qualification standards set forth in 2801.603-2(d), the appointing official (refer to 2801.601(a), (b)(2), and (c) for identification of the appointing officials) shall issue a SF 1402, Certificate of Appointment, in accordance with 2801.603-3.

(d) *Required qualifications.* Qualification standards are listed, respectively, for goods and services and real property procurement authority. Additional qualification standards for each level may be established, as

determined appropriate to support a bureau's mission.

(1) *Goods and services.* A contracting officer candidate must be certified as competent at the appropriate career level prior to receiving a delegation of procurement authority. The level of delegated procurement authority and corresponding career level certification requirements are listed below. The mandatory training requirements shall be met through attending courses that provide skill training in the units of instruction outlined in the Federal Acquisition Institute (FAI) Contract Specialist Workbook, as specified by OFPP Policy Letter 92-3. Courses may be taken from any institution as long as they provide the requisite skill training. For all in-house courses, i.e., courses that are conducted or sponsored by the bureau or by the DOJ Training Center, the Procurement Executive will determine which courses meet the criteria. For all outside courses, i.e., courses that are conducted or sponsored by sources other than DOJ personnel or DOJ contractors, each bureau will be required to determine which courses qualify. The OJT units of instruction and related tasks for Level I contracting officers shall be completed as listed in the Department's Master Development Plan for purchasing personnel. The OJT units of instruction, related tasks and standards for Levels II, III, and IV, as mandated by OFPP Policy Letter 92-3, are contained in the Contract Specialist Workbook and shall be completed as listed in the Department's Master Development Plan (MDP) for all contracting personnel.

(i) *Level I.* Completion of the following course and related OJT units of instruction that are set forth in the Master Development Plan—Purchasing. (If the individual is not in the 1102 or 1105 occupational series, the OJT units of instruction are not required to be completed.):

Course	Hours
Small Purchase Basics	40

(ii) *Level II.* Completion of the following courses and applicable OJT units of instruction that are set forth in the Department's MDP—Contracting.

Courses	Hours
Introduction to Contracting	40
Procurement Planning	40
Contracting by Sealed Bidding	40
Price Analysis	40
Contracting By Negotiation	40
Cost Analysis	40
Total	240

(iii) *Level III.* In addition to completion of the courses and OJT units of instruction specified for Level II, the following courses and applicable OJT units of instruction that are set forth in the Department's MDP—Contracting must be completed.

Courses	Hours
Negotiation Techniques	40
Gov't Contract Administration ..	40
Gov't Contract Law	40
Types of Gov't Contracts	24
Total	144

(iv) *Level IV.* In addition to completion of the courses and OJT units of instruction specified for Levels II and III, the following courses and applicable OJT units of instruction that are set forth in the Department's MDP—Contracting must be completed.

Courses	Hours
Advanced Contract Administration	40
Advanced Cost and Price Analysis	40
Advanced Contract Negotiation	40
Termination	40
Total	160

(2) *Real property.*

(i) Training subject areas for real property procurement.

(A) It is understood that the following are meant to be general subject areas, which pertain to the authority to enter into real property acquisitions, not course titles. The bureau, in determining the acceptability of a particular course, will make a determination based on what is generally understood in the area of real property acquisition and related training.

(1) Federal Real Property Leasing or Basic Lease Contracting (40 hours);

(2) Real Estate Law or Federal Real Property Lease Law (40 hours);

(3) Pricing of Lease Proposal (40 hours);

(4) Real Estate Appraisal Principles or equivalent course (40 hours);

(5) Techniques of Negotiating Federal Real Property Leases (40 hours).

Total—200 Hours

(B) The Price and Cost Analysis courses and Negotiation Techniques course listed under 2801.603-2(d)(1) may be substituted for the required Pricing of Lease Proposal and Techniques of Negotiating Federal Real Property Leases courses, respectively.

(i) The levels of delegated real property authority and the qualification requirements are listed below.

(A) *Level I.* Signatory authority to enter into real property contracts up to the small purchase threshold as set forth in FAR Part 13.

(1) Completion of the qualification standards cited in 2801.603-2(d)(1) and receipt of a Level I delegation of procurement authority for supplies and services, or for realty leasing and sales personnel, completion of one year of real estate experience that demonstrate the ability to perform at Level I; and

(2) Completion of 200 hours of training from the subject areas listed in 2801.603-2(d)(2)(i).

(B) *Level II.* Signatory authority to enter into real property contracts up to \$100,000.

(1) Completion of the qualification standards cited in 2801.603-2(d)(1) and receipt of a Level II delegation of procurement authority for goods and services, or for realty leasing and sales personnel, completion of two years of real estate experience that demonstrate the ability to perform at Level II; and

(2) Completion of 200 hours of training from the subject areas listed in 2801.603-2(d)(2)(i).

(C) *Level III.* Signatory authority to enter into real property contracts up to \$500,000.

(1) Completion of the qualification standards cited in 2801.603-2(d)(1) and receipt of a Level III delegation of procurement authority for goods and services, or for realty leasing and sales personnel, three years of real estate experience that demonstrate the ability to perform at Level II, including six months as a Real Property Contracting Officer equivalent to Level II responsibilities that demonstrate the ability to perform at Level III; and

(2) Completion of 200 hours of training from the subject areas listed in 2801.603-2(d)(2)(i).

(D) *Level IV.* Signatory authority to enter into real property contracts exceeding \$500,000.

(1) Completion of the qualification standards cited in 2801.603-2(d)(1) and receipt of a Level IV delegation of procurement authority for goods and services, or for realty leasing and sales personnel, completion of four years of real estate experience that demonstrate the ability to perform at Level III, including one year as a Real Property Contracting Officer equivalent to the Level III responsibilities that demonstrated the ability to perform at Level IV; and

(2) Completion of 200 hours of training from the subject areas listed in 2801.603-2(d)(2)(i).

(3) The qualification standards cited under 2801.603-2(d)(1) and (2) are not applicable to management officials of

the Department and its components who have contracting officer authority for goods and services by virtue of their organizational placement at a level above the chief of the contracting office as defined in JAR 2802.102(f).

(e) *Equivalencies.*

(1) Prior procurement training and work experiences of senior and intermediate level personnel may be substituted for the mandatory training requirements for goods and services (both course work and units of instruction) if it is determined by the supervisor that the individual is already competent to perform applicable contracting officer's duties. The supervisor's determination shall be based on the results of an interview and review of the individual's prior education, procurement training, and work experiences. (The standard procurement career levels, which are applicable to individuals in the 1102 and 1105 series, as well as to those in other classification series who perform contracting duties more than 50 percent of the time, are: (i) Entry—GS-1102-5/8; (ii) Intermediate—GS-1102-9/12; (iii) Senior—GS/GM-1102-13/Above; and (iv) Purchasing—GS-1105 any grade.)

(2) Completion of an advanced degree in Government Contracting, completion of a certification program in Government Contracting, or passing an examination which is given by a nationally recognized professional contract management organization such as the National Contract Management Association, may be substituted for the mandatory training courses for procurement of goods and services, if these items have been completed prior to the effective date of Justice Acquisition Circular (JAC) 94-1. The individual shall, however, be required to complete all applicable on-the-job training units of instruction.

(3) Completion of courses towards an undergraduate or advanced degree may be taken into consideration, on a case-by-case basis, as a substitute for the mandatory training courses. The individual shall, however, be required to complete all applicable on-the-job training units of instruction for procurement of goods and services, and all applicable work experience for procurement of real property.

(4) Completion of a Juris Doctor (J.D.) degree from an American Bar Association accredited law school may be substituted for the following Level II mandatory training courses for procurement of goods and services: Introduction to Contracting; Procurement Planning; Contracting by Sealed Bidding; and Contracting by Negotiation. The individual shall,

however, be required to complete all applicable on-the-job training units of instruction.

(5) Management of Defense Acquisition Contracts (Basic course, if completed prior to the effective date of JAC 94-1, is equivalent to the following mandatory training courses for procurement of goods and services: 40 hours of Introduction to Contracting, 40 hours of Sealed Bidding, 40 hours of Contracting by Negotiation, 40 hours of Government Contract Administration, and 24 hours of Types of Government Contracts.

(6) Management of Defense Acquisition Contracts (Advanced course), if completed prior to the effective date of JAC 94-1, is equivalent to the following mandatory training courses for procurement of goods and services: 40 hours of Advanced Contract Administration and 40 hours of Advanced Contract Negotiation.

(7) All employees' IDPs shall be documented to reflect the substituted training and on-the-job training units of instruction, as applicable.

(f) *Implementation schedule and waivers.*

(1) Individuals holding existing delegations of authority may retain their delegations until October 1, 1995, while qualifying under the standards in this section. Existing delegations shall not be changed to increase or decrease the dollar authority, or remove other limitations until the individual is determined qualified under the prescribed standards. Effective October 1, 1995, only those individuals who meet the minimum standards set forth in the regulation in this section shall be delegated contracting officer's authority. If an individual holding an existing delegation of authority fails to qualify under the standards set forth in the regulation in this section, by October 1, 1995, the existing delegation of authority shall be terminated by the contracting activity. It is recognized that under certain circumstances, an unusual need might dictate delegation of a warrant to an individual who does not meet the standards in this section. In those rare circumstances where it is necessary to nominate a candidate who does not fully meet the standards, a written waiver request must be submitted, by the Head of the contracting activity, for approval of the Procurement Executive.

(2) All waiver requests must contain a complete justification for the action requested and, as applicable, a copy of the employee's IDP which specifies the action to be taken to meet the delegation of procurement authority requirements.

2801.603-3 Appointment.

(a) Delegations of authority to other than those positions expressly identified in section 2801.601 (a) and (b) shall be made only to individuals by name. The delegations shall be issued in writing on Standard Form 1402, Certificate of Appointment, and shall contain the following mandatory elements:

(1) Type of delegation, e.g., goods and services, lease contracting, real property.

(2) The dollar limit, if any, of the delegation.

(3) If the delegation of authority carries the power of redelegation and the limits of the redelegation of authority.

(4) Any limitations of the type of purchases, i.e., open market, GSA schedules, etc.

(b) Upon issuance, a copy of all SF 1402s, along with the individual's qualification statement shall be submitted to the Office of the Procurement Executive.

(c) A copy of the SF 1402 and qualification statement shall be maintained, in accordance with bureau procedures, for each contracting officer.

2801.603-4 Terminations.

When an appointing official determines to make a change in the delegation of authority, including increasing or decreasing the limitations, a new SF 1402, Certificate of Appointment shall be issued and the existing warrant shall be officially terminated.

PART 2802—DEFINITIONS OF WORDS AND TERMS

6. In section 2802.102, paragraph (a) is revised to read as follows:

2802.102 Definitions.

* * * * *

(a) *Contracting activity* means an office, board, division, or bureau within the Department which has been delegated procurement authority to manage contracting functions associated with its mission or, as is the case with the Office of Justice Programs, which must adhere to the procurement policy of the Attorney General. See 2801.602 (a), (b)(1) and (b)(2).

* * * * *

PART 2806—COMPETITION REQUIREMENTS

7. Part 2806 is amended as set forth below:

a. In 2806.304(a) remove the words "bureau Procurement Chief" and add in their place the words "chief of the contracting activity" and also remove

the words "bureau Competition Advocate" and "bureau competition advocate" and add, in their place the words "procuring activity competition advocate".

b. In section 2806.501 paragraph (b) is revised to read as follows:

2806.501 Requirement.

* * * * *

(b) The agency head will appoint in each bureau an official to be the procuring activity competition advocate. The procuring agency competition advocates shall be vested with the overall responsibility for competition activities within their respective procuring activity. No individual in the contracting office at or below the level of chief of the contracting office may serve as the procuring activity competition advocate. An individual at any level in the supervisory chain above the chief of the contracting office may serve as procuring activity competition advocate.

c. Section 2806.502 is revised to read as follows:

2806.502 Duties and responsibilities.

(a) The Procurement Executive shall:

(1) Provide guidance to competition advocates in formulating plans, goals, and procedures to achieve the goals of enhancing competition and challenging barriers to full and open competition; and,

(2) Review and approve justifications for other than full and open competition for contract requirements over \$10 million in accordance with JAR 2806.303-2.

(b) The DOJ Competition Advocate is responsible for the duties and responsibilities described in FAR 6.502.

(c) The Procuring Activity Competition Advocate shall:

(1) Actively enforce the Department's Competition Advocacy Program within the procuring activity. Ensure that systems are established for the effective

internal control of procuring activity functions and activities which implement the Department's Competition Advocacy Program.

(2) Review specifications for unnecessary detail and statements of need for undue restrictions which have not been successfully tested in the marketplace. Should the procuring activity competition advocate challenge that the specifications are not conducive to full and open competition or that the statement of need is unduly restrictive, corrective action shall be taken as the chief of the contracting office determines necessary.

(3) Review and approve justifications for other than full and open competition for contract requirements over \$100,000 but not exceeding \$1 million. Justifications submitted to the procuring activity competition advocate shall be prepared pursuant to FAR 6.303 and shall contain the concurrence of the chief of the contracting office before being forwarded to the competition advocate.

(4) Concur with justifications for other than full and open competition for contract requirements over \$1 million but not exceeding \$10 million which require the review and approval by the head of the contracting activity or designee. Such justifications shall be prepared pursuant to FAR 6.303 and the JAR 2806.303-2. In addition to obtaining the concurrence of the procuring activity competition advocate, the concurrence of the chief of the contracting office shall also be obtained before being forwarded for higher level review and approval.

(5) Identify and challenge barriers to full and open competition.

(6) Implement specific goals and objectives to enhance competition.

(7) Prepare and submit to the DOJ Competition Advocate, by November 30th of each year, an annual report of competition advocacy activities conducted during the prior fiscal year.

PART 2807—ACQUISITION PLANNING

8. Part 2807 is amended as set forth below:

a. In § 2807.102, paragraph (b) is revised to read as follows:

2807.102 Policy

* * * * *

(b) Acquisition planning shall be accomplished in accordance with the Department's Advance Procurement Planning Program Order. Approval for alterations of programs or DOJ forms must be obtained from the Office of the Procurement Executive.

b. In section 2807.103, paragraph (a) is revised to read as follows:

2807.103 Agency-head responsibilities.

(a) The Department's Advance Procurement Planning Program Order provides that heads of components (Offices, Boards, Divisions and Bureaus) shall appoint an acquisition planner for all programs and activities requiring contract actions estimated at \$500,000 or more in any given contract year. Acquisition planners shall be responsible for developing and maintaining written advance procurement plans. The acquisition planner shall work with the component procurement representative in developing advance procurement plans.

* * * * *

2807.7001 [Amended]

c. In section 2807.7001, paragraph (b)(1), remove the words "Department's Advance Procurement Planning Order" and add, in their place, the words "Department's Advance Procurement Planning Program Order," and also remove the words "chiefs of procurement activities" and add, in their place "chiefs of the contracting offices".

[FR Doc. 93-31544 Filed 12-28-93; 8:45 am]

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Proposed Rules

Federal Register

Vol. 58, No. 248

Wednesday, December 29, 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

Rural Electrification Administration

7 CFR Part 1735

Telephone Program Loan Policies, Types, and Requirements

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend its regulation concerning general policies for telephone loans to make consistent for all telephone borrowers the adjusted net worth to assets requirement set forth in the mortgage between REA and its borrowers. The proposed rule would establish at 10 percent, the percentage of adjusted assets used in determining both the borrower's allowable distribution of capital, and certain reporting requirements. This percentage would be incorporated in new mortgages and would also apply to borrowers with outstanding loans regardless of the percentage stated in their existing mortgages.

DATES: Comments concerning this proposed rule must be received by REA or bear a postmark or its equivalent no later than February 28, 1994.

ADDRESSES: Submit written comments to Matthew P. Link, Director, Rural Telephone Bank Management Staff, U.S. Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue, SW., room 2832-S, Washington, DC 20250-1500. REA requests an original and three copies of all comments (7 CFR part 1700). All comments received will be made available for public inspection at room 2238-S, at the address listed above, between 8:30 a.m. and 5 p.m. (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Cheryl Gamboney, Management Analyst, Rural Telephone Bank Management Staff, at the address listed

above, telephone number (202) 720-0530.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this proposed rule will not:

- (1) Preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule;
- (2) Have any retroactive effect; and
- (3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

REA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The REA program provides loans to REA borrowers at interest rates and terms that are more favorable than those generally available from the private sector. REA borrowers, as a result of obtaining federal financing, receive economic benefits which exceed any direct economic costs associated with complying with REA regulations and requirements. Moreover, this proposed rule corrects inequities and establishes a more consistent standard.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and section 3504 of that Act, the information collection and recordkeeping requirements contained in this proposed rule have previously been approved by OMB under control number 0572-0031. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

REA has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees to governmental and nongovernmental entities from coverage under this Order.

Background

REA requires that mortgages and other documents securing REA telephone loans limit the borrower's authority to distribute its capital if the borrower does not have an adjusted net worth in excess of 40 percent of its adjusted assets. The standard form of mortgage also provides an alternative dividend limitation based upon an amount determined by a lower percentage of the borrower's adjusted net worth to adjusted assets together with certain adjustments provided in the borrower's mortgage. The lower percentage of adjusted net worth to adjusted assets is also used to specify when the borrower is subject to certain requirements set forth in the mortgage.

Prior to June 10, 1991, the alternative lower percentage was 20 percent for certain borrowers and 10 percent for all others. All mortgages associated with loans made after June 10, 1991, specify 10 percent. REA proposes to use 10 percent to determine whether a

borrower that has not received a loan since June 10, 1991, is in compliance with REA's capital distributions policy and reporting requirements set forth in the standard form of mortgage. By applying the same alternative lower percentage to all borrowers, this proposed change corrects existing inequities and establishes a more consistent and reasonable policy.

List of Subjects in 7 CFR Part 1735

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For reasons set forth in the preamble, Chapter XVII of Title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELEPHONE PROGRAM

1. The authority citation for part 1735 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. In § 1735.46, the undesignated paragraph is redesignated paragraph (a) and new paragraphs (b) through (h) are added to read as follows:

§ 1735.46 Loan security documents.

(a) * * *

(b) The standard form of mortgage or other security document required by REA to secure telephone loans prohibits the borrower from making certain investments or distributions of assets unless, after such action, the borrower's adjusted net worth is at least:

(1) Forty percent of its adjusted assets; or

(2) As an alternative, the sum of ten percent of its adjusted assets plus certain other adjustments specified in the mortgage.

(c) The standard form of telephone mortgage also states that if the borrower's adjusted net worth is at least ten percent of its adjusted assets, the borrower is not required to take or refrain from taking certain actions as set forth in the mortgage.

(d) REA will apply the ten percent requirement to all telephone borrowers regardless of whether the borrower's existing mortgage sets forth a higher percentage of adjusted net worth to assets for purposes of determining whether the borrower can:

(1) Use the alternative calculation described in paragraph (b)(2) of this section to determine if it can make investments or distributions; or

(2) Take advantage of the benefits described in paragraph (c) of this section.

(e) A borrower with an adjusted net worth of less than twenty percent of its adjusted assets shall continue to fulfill the requirements of the mortgage relating to reporting its ownership and transfers of its ownership, including capital stock, membership certificates and equity capital certificates.

(f) Any borrower meeting the standard forty percent limitation described in paragraph (b)(1) of this section shall continue to be able to pay dividends or make investments in accordance with the borrower's mortgage.

(g) References to a borrower's mortgage in this section include deeds of trust and any other loan document applying the same requirements to a borrower.

(h) This regulation does not limit the rights of any parties to the mortgage other than REA or RTB.

Dated: December 21, 1993.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc 93-31715 Filed 12-28-93; 8:45 am]

BILLING CODE 3410-15-F

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064-AB29

Capital Maintenance

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to amend its leverage and risk-based capital standards to conform with the recently-issued Statement of Financial Accounting Standards No. 115, "Accounting for Certain Investments in Debt and Equity Securities" (FASB 115), which requires banks to explicitly recognize net unrealized holding gains and losses on available-for-sale securities in determining the amount of an institution's common stockholders' equity. Since Tier 1 capital is defined to include common stockholders' equity, this proposal, if adopted, would also affect the calculation of Tier 1 capital. The proposal is consistent with recent Call Report guidance issued by the Federal Financial Institutions Examination Council (FFIEC) that requires banks to adopt FASB 115 for Call Report purposes. In addition, the proposed changes would appear to be

consistent with the intent of section 37 of the Federal Deposit Insurance Act, which provides that accounting principles applicable to depository institutions should be no less stringent than generally accepted accounting principles (GAAP). Because institutions must adopt FASB 115 for Call Report purposes, recognizing the FASB 115 adjustments for regulatory capital purposes will avoid a regulatory burden that would otherwise arise if the treatment of these unrealized gains and losses for regulatory capital purposes were to differ from the method required for GAAP and Call Report purposes.

DATES: Comments on the proposal must be received by January 28, 1994.

ADDRESSES: All comments should be submitted to Hoyle L. Robinson, Executive Secretary, Attention: Room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429 or delivered to room F-400, 1776 F Street, NW., between the hours of 9 a.m. and 5 p.m. on business days. Comments will be available for inspection in room 7118, 550 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: For supervisory purposes, Stephen G. Pfeifer, Examination Specialist (202/898-8904), or Robert F. Storch, Section Chief (202/898-8906), Accounting Section, Division of Supervision; for legal issues, Cristeena G. Naser, Attorney, Legal Division (202/898-3587).

SUPPLEMENTARY INFORMATION:

I. Background

The FDIC's leverage and risk-based capital standards (12 CFR part 325—subpart A and appendix A to part 325) set forth a definition of Tier 1 capital that includes common stockholders' equity. The capital definitions (12 CFR 325.2(d) and section 1.A.1. of appendix A) further explain that common stockholders' equity includes common stock and any related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments, less unrealized losses on marketable equity securities.

In May 1993, the Financial Accounting Standards Board (FASB) issued FASB 115 which, in effect, changes the calculation of stockholders' equity in financial statements prepared in accordance with GAAP by including as a separate component of equity the amount of net unrealized holding gains and losses on debt and equity securities that are deemed to be available-for-sale.

In addition, in materials accompanying the September 1993 Call Report forms, the FFIEC notified all banks that they must adopt the new FASB 115 accounting standard as of January 1, 1994, or the beginning of their first fiscal year thereafter, if later. Early adoption of this standard is also permitted to the extent allowable under FASB 115.

Call Report instructions that apply prior to the adoption of FASB 115 require a separate capital component only for the net unrealized loss on marketable equity securities, consistent with the provisions of Statement of Financial Accounting Standards No. 12, "Accounting for Certain Marketable Securities" (FASB 12). FASB 115, which supersedes FASB 12, broadens the scope of this separate component of stockholders' equity in that the FASB 115 capital component will include unrealized gains and losses on all securities that are available-for-sale (debt as well as equity), rather than just the net unrealized losses on marketable equity securities.

This new GAAP accounting standard and the conforming Call Report guidance raise the question of how the FASB 115 capital component for unrealized gains and losses on available-for-sale securities should be treated in determining the amount of an institution's regulatory capital under part 325. As a result, the FDIC is proposing to amend its leverage and risk-based capital standards to explicitly recognize net unrealized holding gains and losses on available-for-sale securities in determining the amount of an institution's common stockholders' equity.

This proposed regulatory capital treatment is consistent with the manner in which the FASB 115 capital component will be handled for financial reporting purposes under GAAP and for regulatory reporting purposes in the Call Reports that are filed by banks in accordance with the instructions issued by the FFIEC. Since Tier 1 capital under the FDIC's capital standards is defined to include common stockholders' equity, this proposal, if adopted, would also affect the calculation of Tier 1 capital.

II. Summary of FASB 115 Accounting Requirements

Under the GAAP rules and the Call Report instructions that apply to banks prior to the adoption of FASB 115, the basis of accounting for securities differs, depending on whether the securities are held for investment, held for trading, or held for sale. FASB 115 revises the categories among which depository

institutions must divide their securities holdings to held-to-maturity, trading, and available-for-sale, and provides a different accounting treatment for each category.

Held-to-Maturity

The held-to-maturity category supplants the current held-for-investment category, but the accounting basis (i.e., amortized cost) remains the same. FASB 115 permits an institution to include a security in the held-to-maturity category only if the institution has "the positive intent and ability to hold the security to maturity".

Trading Securities

The accounting treatment for trading securities remains unchanged. Trading securities are those debt and equity securities that an institution buys and holds principally for the purpose of selling in the near term. Trading securities will continue to be reported at fair value (i.e., generally market value) with unrealized changes in value (appreciation and depreciation) reported directly in the income statement as a part of the institution's earnings.

Available-for-Sale

Securities in the available-for-sale category are those securities for which the institution does not have the positive intent and ability to hold to maturity, yet does not intend to trade actively as part of its trading account. Under GAAP that exists prior to the adoption of FASB 115, debt securities held for sale have been carried at the lower of cost or fair value, with the offsetting entry reported directly in the income statement. However, securities meeting the new FASB 115 definition of available-for-sale will be reported at fair value, but any changes in the fair value of available-for-sale securities will not be included in the bank's income statement. Rather, the unrealized holding gains and losses on these securities, net of any applicable tax effect, will be reported directly as a separate component of stockholders' equity. Consequently, any unrealized appreciation or depreciation in the value of securities in the available-for-sale category, after adjusting for any applicable tax effects, will increase or decrease an institution's equity capital, respectively, but will have no immediate effect on the reported earnings of the institution.

The available-for-sale category is likely to include more securities than are included in the held-for-sale category it replaces. This is because institutions previously could include in the held-for-investment category

securities that banks intended to hold for long-term investment purposes, but for which they may not necessarily have possessed the positive intent and ability to hold to maturity. Under FASB 115, however, a security should not be reported in the held-to-maturity category if, for example, the security may be sold in response to: (1) Changes in market interest rates and related changes in prepayment risk; (2) liquidity needs; (3) changes in the availability of and the yield on alternative investments; (4) changes in funding sources and terms; or (5) changes in foreign currency risk (FASB 115, ¶9).

FASB 115 indicates that certain changes in circumstances may cause an institution to sell or transfer a held-to-maturity security without necessarily calling into question the institution's intent to hold to maturity other securities carried in this category. Such changes in circumstances include, for example, evidence of a significant deterioration in the issuer's creditworthiness, a change in regulatory requirements significantly modifying what constitutes a permissible investment or the maximum level of investments in certain securities, a significant increase in the industry's capital requirements, and a significant increase in the risk weights of debt securities used for risk-based capital purposes. In addition, FASB 115 states that there may be other events that are "isolated, nonrecurring, and unusual" in nature that could not have been reasonably anticipated by management that may cause an institution to sell or transfer securities from the held-to-maturity category without tainting other securities that remain in that category (FASB 115, ¶8).

III. Impact of FASB 115 for Regulatory Capital Purposes

As discussed above, FASB 115 will restrict the circumstances under which securities may be reported at amortized cost. Thus, a greater proportion of an institution's securities may need to be carried at amounts that consider their fair value than in the past. Although the FDIC's proposal to adopt FASB 115 for part 325 capital purposes will not affect reported earnings, it may result in more volatility in the amount of regulatory capital as the net appreciation or depreciation figure for securities in the available-for-sale category changes over time.

Because of the interest rate environment over the past several years, the fair value of many institutions' securities portfolios may exceed book value. Consequently, this proposal, if

adopted, would result in an immediate increase in Tier 1 capital for those institutions that have net appreciation in the securities they will designate as available-for-sale when FASB 115 is adopted.

Nonetheless, as the interest rate environment changes over time, some institutions may find that the impact of this proposal could result in lower regulatory capital and possibly additional regulatory restrictions under the prompt corrective action rules (12 CFR part 325—subpart B) and under various other laws and regulations that are based, in part, on the institutions' capital levels.¹

The volatility arising from changes in the fair value of available-for-sale securities may be minimized if, for example, the institution employs effective asset/liability and interest rate risk management techniques that reduce a bank's exposure to movements in interest rates and related market risks. Further, many institutions maintain capital cushions over and above the minimum capital standards and therefore will be better able to absorb any adverse fluctuations in capital levels that may arise from FASB 115 fair value adjustments.

The proposed changes to the FDIC's capital standards would conform the part 325 capital definitions with the new FASB 115 accounting standard and with the recent notification to banks about the applicability of this standard for Call Report purposes. In addition, the proposed changes would appear to

¹ Some of the laws and regulations that may be affected if the proposed revisions are adopted include those dealing with the risk-related insurance premium system (12 CFR part 327), brokered deposit restrictions (12 CFR part 337.6), and restrictions on activities and investments of insured state banks (12 CFR part 362). For example, under § 362.3(d)(4) of the FDIC's regulations, certain equity investments are subject to a maximum permissible investment limitation as a percent of Tier 1 capital. If the FASB 115 adjustments for available-for-sale securities are recognized for regulatory capital purposes, as is being proposed, this would affect the calculation of the amount of additional investments. If any, an insured state bank can make under this limitation. The book value of equity investments and Tier 1 capital are used in computing this amount. The FDIC recognizes that banks whose equity investments under part 362 are already at the maximum may have to adjust their holdings if FASB 115 is adopted for regulatory capital purposes since any upward adjustment to the book value of these securities for unrealized holding gains will be based on the gross amount of unrealized appreciation before considering applicable tax effects whereas the actual increase in Tier 1 capital for this unrealized appreciation will be net of applicable tax effects. In addition, the FDIC notes that state-chartered banks will need to consult with their respective state banking authorities to determine the impact, if any, that FASB 115 may have on the application of state laws and regulations, including legal lending limits.

be consistent with the intent of section 37 of the Federal Deposit Insurance Act (12 U.S.C. 1831n), which provides that accounting principles applicable to depository institutions should be no less stringent than GAAP and should: (a) Result in financial statements and reports of condition that accurately reflect the capital of such institutions, (b) facilitate effective supervision of the institutions, and (c) facilitate prompt corrective action at the least cost to the insurance funds. Section 37 also promotes uniformity among the agencies in the accounting standards used to determine compliance with regulatory requirements applicable to depository institutions, including regulatory capital requirements. This proposal has been developed in consultation with the other federal banking agencies to ensure uniformity in the application of FASB 115 for regulatory capital purposes.

Since institutions must adopt FASB 115 for Call Report purposes, recognizing the FASB 115 adjustments for regulatory capital purposes will avoid a regulatory burden that would otherwise arise if the treatment of these unrealized gains and losses for regulatory capital purposes were to differ from the method required for GAAP and Call Report purposes.

The FDIC notes that the decision to propose the adoption of FASB 115 for regulatory capital purposes should not be viewed as an endorsement of a wider application of market value accounting. The FDIC's longstanding concerns that market valuations of many assets are highly subjective and that market value accounting could produce undesirable volatility in earnings are somewhat mitigated in the case of FASB 115, since this accounting standard applies only to certain investment securities having a readily discernible fair value and since unrealized holding gains and losses on available-for-sale securities are reflected directly in capital without affecting reported earnings.

If the proposed part 325 revisions are adopted, FDIC examiners will continue to consider the quality and not just the level of a bank's capital in evaluating capital adequacy. Institutions with available-for-sale securities possessing net unrealized holding gains that comprise a disproportionately large portion of Tier 1 capital may possibly be exposed to excessive levels of interest rate or market risk. These institutions will be expected to maintain capital levels above the minimum regulatory capital standards and commensurate with the institutions' particular risk profiles.

After the federal banking agencies take final action on this proposal, the FDIC intends to consult with the Office of the Comptroller of the Currency, the Federal Reserve Board, and the Conference of State Bank Supervisors concerning the need, if any, for revisions to the "Uniform Agreement on the Classification of Assets and Appraisal of Securities Held by Banks". The FDIC and the other federal and state bank supervisors last revised this joint statement in May 1979. The statement contains guidance on the appraisal of securities in bank examinations, including the effect of appreciation and depreciation in investment securities on regulatory capital.

IV. Issues for Specific Comment

The FDIC invites comments on all aspects of this proposed regulatory capital rule. In addition to other comments that respondents to this proposal may wish to provide, the FDIC requests specific comments on the following:

(1) *Recognition of FASB 115 Capital Adjustments for Regulatory Capital Purposes.* Given the provisions of section 37 of the FDI Act and the other issues discussed in this preamble, should the FASB 115 capital adjustments that institutions are required to reflect for GAAP and Call Report purposes also be taken into consideration for purposes of determining an institution's Tier 1 capital under the FDIC's leverage and risk-based capital standards? If not, what regulatory capital treatment should be applied?

(2) *Effect of FASB 115 Adjustments on Other Capital-Based Regulations.* If the FASB 115 capital adjustments are recognized for purposes of calculating an institution's leverage and risk-based capital ratios, these adjustments may also have an effect on certain other laws and regulations that are based, in part, on regulatory capital levels, including the prompt corrective action rules (12 CFR part 325—subpart B), the risk-related insurance premium system (12 CFR part 327), the brokered deposit restrictions (12 CFR 337.6), and the restrictions on activities and investments of insured state banks (12 CFR part 362), such as the limitations in § 362.3(d)(4) on the book value of certain equity investments as a percent of Tier 1 capital. If the FASB 115 capital adjustments are recognized in calculating an institution's compliance with the minimum leverage and risk-based capital standards, should these adjustments also be recognized for purposes of the other rules noted above that are based, in part, on an

institution's regulatory capital levels? If not, what treatment should be used for these other regulations?

(3) *Appropriateness of Recognizing FASB 115 Net Appreciation for Regulatory Capital Purposes.* In determining the amount of any FASB 115 adjustment to stockholders' equity for changes in the fair value of available-for-sale securities, FASB 115 as well as the conforming Call Report guidance take into consideration all changes in the fair value of these securities, regardless of whether these changes represent net appreciation or net depreciation. Under the accounting rules that are applicable prior to the adoption of FASB 115, an institution's capital for GAAP and Call Report purposes could not be increased by the amount of any net unrealized appreciation on securities held for sale. Should the regulatory capital treatment for changes in the fair value of securities held in the FASB 115 available-for-sale category differ, depending upon whether the change represents net appreciation or net depreciation? If so, what treatment is appropriate?

V. Regulatory Flexibility Act Statement

The Board of Directors of the FDIC hereby certifies that these amendments to part 325 will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). These amendments will not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions nor will small institutions need to seek out the expertise of specialized accountants, lawyers or managers to comply with the regulation. In light of this certification, the Regulatory Flexibility Act requirements (at 5 U.S.C. 603, 604) to prepare initial and final regulatory flexibility analyses do not apply.

VI. 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.

List of Subjects in 12 CFR Part 325

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

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 325 of title 12

of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

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

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909; Public Law 102-233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Public Law 102-242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. Section 325.2(d) is revised to read as follows:

§ 325.2 Definitions.

(d) *Common stockholders' equity* means the sum of common stock and related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, foreign currency translation adjustments, and net unrealized holding gains and losses on available-for-sale securities.

3. In appendix A to part 325, the definition of common stockholders' equity in section I.A.1. is revised to read as follows:

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

- I. ***
- A. ***
- 1. ***

—Common stockholders' equity capital (includes common stock and related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, foreign currency translation adjustments, and net unrealized holding gains and losses on available-for-sale securities);

By order of the Board of Directors.

Dated at Washington, D.C. this 14th day of December, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93-31656 Filed 12-28-93; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 93-ANE-68; Notice No. 33-AME-07]

Special Conditions; Pratt & Whitney Model(s) PW4073, PW4084, and PW4088 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Pratt & Whitney (PW) Model(s) PW4073, PW4084, and PW4088 turbofan engines. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from water and hail ingestion. This notice proposes the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 33 of the Federal Aviation Regulations (FAR).

DATES: Comments must be submitted on or before February 14, 1994.

ADDRESSES: Comments on this proposal may be submitted in triplicate to: Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93-ANE-68, 12 New England Executive Park, Burlington, Massachusetts 01803-5299. Comments must be marked: docket No. 93-ANE-68. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas Boudreau, Engine and Propeller Standards Staff, ANE-110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5229; telephone (617) 238-7117; fax (617) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under "ADDRESSES." All communications received on or before

the closing date for comments, specified under "DATES," will be considered by the Administrator before taking action on the proposal. The proposal 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 special conditions. 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 proposal will be filed in the docket.

Commenters 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. 93-ANE-68." The postcard will be date stamped and returned to the commenter.

Background

On December 10, 1990, Pratt & Whitney applied for type certification of Model(s) PW4073 and PW4084 turbofan engines. The Model PW4088 engine was added at a later date. The FAA has determined that the current water and hail ingestion requirements of § 33.77(c) of the FAR do not represent the inclement weather threat encountered in service.

A study of in-service inclement weather events has indicated a need to modify the water and hail ingestion requirements of this section to ensure design integrity and demonstrate an adequate level of safety. This study indicated that a potential flight safety threat existed for engines when operating in severe weather environments. Although current requirements provide adequate validation of the engine's resistance to mechanical damage due to hail impact and case contractions from water ingestion, the study showed that the current standards did not adequately address engine power loss anomalies, such as rollback and flameout at lower than takeoff rated power settings.

The FAA has concluded that additional safety standards must be applied to Pratt & Whitney Model(s) PW4073, PW4084, and PW4088 turbofan engines to demonstrate that they are capable of acceptable operation in severe weather environments.

Type Certification Basis

Under the provisions of § 21.101 of the FAR, Pratt & Whitney must show that Model(s) PW4073, PW4084, and

PW4088 turbofan engines meet the requirements of the applicable regulations in effect on the date of the application. Those Federal Aviation Regulations are § 21.21 and part 33, effective February 1, 1965, as amended through August 10, 1990, Amendment 33-14.

The Administrator finds that the applicable airworthiness regulations in Part 33, as amended, do not contain adequate or appropriate safety standards for Pratt & Whitney Model(s) PW4073, PW4084, and PW4088 turbofan engines because of unique design criteria. Therefore, the Administrator proposes these special conditions 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 and opportunity for comment, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Conclusion

This action affects only Pratt & Whitney Model(s) PW4073, PW4084, and PW4088 turbofan engines. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these new design criteria on the engine.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421, 1423; 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 Pratt & Whitney Model(s) PW4073, PW4084, and PW4088 turbofan engines.

In addition to the requirements of FAR § 33.77, the following tests and analyses must be conducted, unless compliance can be shown by alternate methods acceptable to the Administrator.

(a) The most critical operating point(s) for water and hail ingestion must be determined by test, analysis, or other acceptable methods, and must be based on the threat levels defined in Table 1 and Table 2 of this proposal. The critical point(s) determination must address the entire operating envelope of the engine. The critical operating point(s) is defined as those operating conditions within the

engine flight envelope at which an engine operability margin is reduced to a minimum level.

TABLE 1.—RAIN THREAT

Altitude (feet)	Liquid water content (LWC) (grams water per cubic meter air)
0	20.0
20,000	20.0
26,300	15.2
32,700	10.8
39,300	7.7
46,000	5.2

Note: LWC and HWC values at other altitudes may be determined by linear interpolation.

TABLE 2.—HAIL THREAT

Altitude (feet)	Hail water content (HWC) (grams water per cubic meter air)
0	8.9
7,300	8.9
8,500	9.4
10,000	9.8
11,000	9.9
12,000	10.0
15,000	10.0
16,000	8.9
17,700	7.8
19,300	6.6
21,500	5.6
24,300	4.4
29,000	3.3
46,000	3.3

Note: LWC and HWC values at other altitudes may be determined by linear interpolation.

(b) The engine will be shown to operate at an acceptable level for a minimum of three minutes when subjected to the critical point conditions for water ingestion. The percentage of water to airflow by weight, at the critical point, is to be reproduced during the engine test. The test method should adequately model the inflight water concentration effect at the primary flow (core) inlet. Water droplet size and velocity distributions must be representative of the critical water ingestion point. All variable systems, whose position could effect engine operation during water ingestion, must be scheduled for the most critical positions.

(c) The engine will be shown to operate at an acceptable level for a minimum of 30 seconds when subjected to the critical point conditions for hail

ingestion. The percentage of hail to airflow by weight, at the critical point, is to be reproduced during the engine test. The test should adequately model the inflight hail concentration effect at the primary flow (core) inlet. Hailstone size and velocity distributions must be representative of the critical hail ingestion point. All variable systems whose position could effect engine operation during hail ingestion, must be scheduled for the most critical positions.

(d) Acceptable engine operation, as noted in paragraphs (b) and (c) of this special condition, must preclude rundown, flameout, surge, loss of acceleration capability, limit exceedance, or any other engine anomaly which would negatively affect the operability of the engine.

(e) The engine, as operated under the conditions defined in paragraphs (b) and (c) of this special condition, must show that it will operate acceptably if exposed to other probable factors associated with normal operations. These other probable factors include, but are not limited to, performance losses, installation effects, inlet distortion, and throttle transients.

Issued in Burlington, Massachusetts, on December 20, 1993.

Jay J. Pardee,

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

[FR Doc. 93-31754 Filed 12-28-93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 93-NM-210-AD]

Airworthiness Directives; Airbus Industrie Model A320-111, -211, and -231 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320-111, -211, and -231 airplanes. This proposal would require modification of the currently installed one-stage shock absorbers on the main landing gear to two-stage shock absorbers. This proposal is prompted by the results of an evaluation of the air-to-ground sensing logic relative to the operation of other airplane systems during landing in adverse weather conditions. The actions specified by the proposed AD are intended to prevent a delay in sensing

by the air-to-ground logic system that the airplane is on the ground, which could prevent the airplane from achieving the landing distances specified in the FAA-approved Airplane Flight Manual (AFM).

DATES: Comments must be received by February 24, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-210-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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

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-210-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-210-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

Recently, the FAA conducted an evaluation of the air-to-ground sensing logic relative to the operation of other airplane systems while landing during adverse weather conditions. The results of this evaluation indicated that under certain landing conditions the extension of the ground spoilers (also the application of auto-brakes and thrust reverser deployment) may be delayed due to a delay by the air-to-ground logic system to sense that the airplane is on the ground.

One of the major components of the air-to-ground logic system is the Spoilers Elevator Computers (SEC). Model A320 series airplanes use SEC's to provide the signal that controls deployment and retraction of hydraulically actuated speed brakes (flight spoilers) and ground spoilers. The SEC's must receive input signals with specific characteristics that meet certain criteria, prior to commanding movement of the speed brakes or ground spoilers.

Three different SEC's control a total of five pairs of spoilers on the left- and right-hand wings. Ground spoilers utilize all five pairs of spoilers, while the speed brakes utilize only three pairs of spoilers. Prior to commanding the deployment of ground spoilers upon landing, the SEC's must properly sense a "flight to ground transition." The following logic criteria must be met: Both main landing gears (MLG) wheel speed must be greater than 72 knots; or the radio altimeter height must be less than 10 feet, and both the left- and right-hand MLG shock absorbers must be compressed by an amount equivalent to a specified weight on the landing gear. (There are other signals the SEC's must receive prior to ground spoiler deployment, but they are not pertinent to this discussion.) If wheel speed is less than 72 knots or if proper load is not sensed on the MLG shock absorbers, extension of the ground spoilers would be inhibited.

Model A320 series airplanes on which Airbus Modification No. 22150 (double chamber MLG oleo), described in Airbus Industrie Service Bulletin A320-32-

1058, Revision 2, dated June 16, 1993, has not been installed, must have a load of 6.3 tons per oleo to trigger the ground signal.

Landing conditions exist where the SEC may inhibit extension of the grounds spoiler even though the ground spoilers are needed to achieve the landing distances specified in the FAA-approved Airplane Flight Manual (AFM). The reason for the inhibition can be traced to the input signals that the SEC's receive. During adverse weather, landing conditions could exist where wheel speed may not initially reach 72 knots and sufficient load on the MLG shock absorbers may not be present to trigger the ground signal. Thus, the ground spoilers would not be deployed until these conditions are met. If "CONFIG FULL" (flaps/slats fully deployed) is selected, the in-flight deployment of speed brakes (flight spoilers) would be inhibited due to current system design requirements. To deploy the speed brakes, the airplane must be in a configuration other than "CONFIG FULL."

This condition, if not corrected, could result in a delay of sensing by the air-to-ground logic system that the airplane is on the ground, which could prevent the airplane from achieving the landing distances specified in the FAA-approved AFM.

Airbus Industrie has issued Service Bulletin A320-32-1058, Revision 2, dated June 16, 1993, that describes procedures for modification of the currently installed one-stage shock absorbers on the MLG to two-stage shock absorbers. The two-stage shock absorbers significantly reduce the load on the MLG that is necessary to trigger the ground signal. After modification, a load of about 2 tons per oleo is needed to trigger the ground signal. Under certain landing conditions, this decrease in the MLG load that is necessary to trigger the ground signal could allow earlier deployment of the ground spoilers, and consequently allow the airplane to achieve the landing distances specified in the FAA-approved AFM.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

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

type design registered in the United States, the proposed AD would require modification of the currently installed one-stage shock absorbers with two-stage shock absorbers. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 35 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 58 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$55 per work hour. Required parts would cost approximately \$16,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$671,650, or \$19,190 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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

Airbus Industrie: Docket 93-NM-210-AD.

Applicability: Model A320-111, -211, and -231 airplanes, as listed in Airbus Industrie Service Bulletin A320-32-1058, Revision 2, dated June 16, 1993, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a delay in sensing by the air-to-ground logic system that the airplane is on the ground, which could prevent the airplane from achieving the landing distances specified in the FAA-approved Airplane Flight Manual (AFM), accomplish the following:

(a) Within 12 months after the effective date of this AD, modify the currently installed one-stage shock absorbers to two-stage shock absorbers in accordance with Airbus Industrie Service Bulletin A320-32-1058, Revision 2, dated June 16, 1993.

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

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

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

Issued in Renton, Washington, on December 22, 1993.

Ronald T. Wojnar,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. 93-31744 Filed 12-28-93; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 93-NM-170-AD]

Airworthiness Directives; Boeing Model 737-100, -200, and -200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to all Boeing Model 737-100, -200, and -200C series airplanes, that currently requires periodic inspections to detect missing nuts and/or damaged secondary support hardware adjacent to the engine aft mount, and replacement, if necessary. This action would provide for an optional terminating action, which, if accomplished, would eliminate the need for certain inspections. This proposal is prompted by the development of a modification that will prevent wearing of the secondary support. The actions specified by the proposed AD are intended to prevent failure of the secondary support to sustain engine loads, in the event of failure of the aft engine mount cone bolt, which could result in engine separation from the wing.

DATES: Comments must be received by February 24, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-170-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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Thomas Rodriguez, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2779; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications 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-170-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-170-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On April 5, 1991, the FAA issued AD 91-09-14, Amendment 39-6972 (56 FR 18696, April 24, 1991), applicable to all Boeing Model 737-100, -200, and -200C series airplanes, to require periodic inspections to detect missing nuts and/or damaged secondary support hardware adjacent to the engine aft mount, and replacement, if necessary. That AD also allows certain worn secondary support load limiter through-bolts to continue to be used on the airplane, if alternative inspection techniques are used for the cone bolt itself. That action was originally prompted by reports of failure of aft engine mount cone bolts which, in one case, led to the separation of an engine from the airplane. The requirements of that AD are intended to prevent failure of the secondary support to sustain engine loads, in the event of failure of the aft engine mount cone bolt, which could result in engine separation from the wing.

Since the issuance of that AD, the manufacturer has developed design changes that will prevent wearing of the secondary support. Worn parts of the secondary support system could lead to failure of the secondary support system, if fatigue fracture should occur in the aft engine mount cone bolt. The FAA has reviewed and approved Boeing Service

Bulletin 737-71-1289, dated August 19, 1993, that describes procedures for replacement of the currently-installed secondary support with a new, modified secondary support. The modified secondary support has been revised with the latest design configuration that will prevent wearing of the secondary support, in the event of failure of the aft engine mount cone bolt, which could result in engine separation from the wing.

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 revise AD 91-09-14 to continue to require periodic inspections to detect missing nuts and/or damaged secondary support hardware, and replacement, if necessary. The proposed AD would also continue to allow certain worn secondary support load limiter through-bolts to continue to be used on the airplane, if alternative inspection techniques are used for the cone bolt itself. Additionally, the proposed AD would provide for replacement of the existing aft engine mount secondary support with a new, modified secondary support, as optional terminating action for certain requirements of this AD. If accomplished, such replacement would eliminate the need for the inspections currently required by the AD, with the exception of the inspections to detect broken aft cone bolts required by paragraph (a)(1). The replacement of the secondary support would be required to be accomplished in accordance with the service bulletin described previously.

The format of the proposed revised AD has been revised to be consistent with the *Federal Register* style.

There are approximately 1,144 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 432 airplanes of U.S. registry would be affected by this proposed action.

The actions currently required by AD 91-09-14 take approximately 3 work hours per airplane to accomplish, at an average labor rate of \$55 per work hour. Based on these figures, the total cost impact of the currently required actions on U.S. operators is estimated to be \$71,280, or \$165 per airplane.

This proposed revision of AD 91-09-14 would add no new additional costs to operators, since it would merely provide for an optional installation that would provide terminating action for certain requirements. Should an operator elect to accomplish the installation, the associated modification would take approximately 30 work hours per airplane to accomplish. The average labor rate is \$55 per work hour.

Required parts would cost approximately \$6,818 per airplane. Based on these figures, the total cost of accomplishing the proposed optional installation is estimated to be \$8,468 per airplane.

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 39-6972 (56 FR 18696, April 24, 1991), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 93-NM-170-AD. Revises AD 91-09-14, Amendment 39-6972.

Applicability: All Model 737-100, -200, and 200C series airplanes, certificated in any category

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the secondary support to sustain engine loads, in the event of failure of the aft engine mount cone bolt, which could result in engine separation from the wing, accomplish the following:

(a) Within the next 45 landings after May 20, 1991 (the effective date of AD 91-09-14, amendment 39-6972), accomplish the following:

(1) Inspect the aft mount cone bolt indicator for proper alignment. Improper alignment indicates a broken aft cone bolt. Broken cone bolts must be replaced, prior to further flight, with bolts that have been inspected in accordance with Boeing Alert Service Bulletin 737-71A1212, dated December 22, 1987, using magnetic particle inspection techniques. Repeat the inspection of the indicator at intervals thereafter not to exceed 45 landings.

(2) Unless previously accomplished within the last 255 landings, inspect the aft mount cone bolt improved secondary support for missing nuts, evidence of bolt wear, and disbonded honeycomb core in accordance with Boeing Service Bulletin 737-71-1250, dated June 14, 1990. Except as provided in paragraph (b) of this AD, missing nuts, bolts worn outside the limits specified in the service bulletin, or disbonded honeycomb core must be replaced, prior to further flight, with new or repaired identical parts. Repeat the inspection at intervals not to exceed 300 landings.

(b) Perform the following inspections if discrepant hardware is found during the inspections required by paragraph (a)(2) of this AD, and replacement hardware is not immediately available:

(1) Prior to further flight, and thereafter at intervals not to exceed 300 landings, inspect for cracks in the aft engine mount cone bolt, in accordance with Boeing Alert Service Bulletin 737-71A1212, dated December 22, 1987, using ultrasonic inspection techniques. Replace cracked cone bolts, prior to further flight, with bolts that have been inspected in accordance with the above service bulletin, using magnetic particle inspection techniques. Replacement (newly installed) cone bolts must be ultrasonically inspected for internal cracking in accordance with the provisions of this paragraph at intervals not to exceed 300 landings.

(2) At the next ultrasonic inspection, as required by paragraph (b)(1) of this AD, unless previously accomplished within 150 to 300 landings after cone bolt installation, accomplish a torque check to verify that the cone bolt is torqued to the proper torque limit specified in the appropriate Boeing maintenance manual. This check is to be accomplished without loosening the bolt. After every cone bolt installation, accomplish the torque check procedure required by this paragraph, between 150 landings and 300 landings following installation. Replacement of discrepant hardware in accordance with paragraph (a)(2) of this AD constitutes terminating action for the requirements of this paragraph.

(i) If the cone bolt torque is below one-half the specified torque, remove the cone bolt and replace it with a serviceable bolt.

(ii) If the cone bolt torque is equal to, or above one-half the specified torque, but below the specified torque, re-torque to the specified level and re-check the torque within the next 150 to 300 landings. If, at that time, the torque is below 90 percent of the specified torque, replace the cone bolt with a serviceable bolt.

(c) Replacement of the existing aft engine mount secondary support with a new, modified secondary support, Kit Number 65C37057-1, in accordance with Boeing Service Bulletin 737-71-1289, dated August 19, 1993, constitutes terminating action for the inspections required by paragraphs (a)(2) and (b), (b)(1), and (b)(2) of this AD.

(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, Seattle 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, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

Issued in Renton, Washington, on December 22, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-31745 Filed 12-28-93; 8:45 am]
BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 93-NM-188-AD]

Airworthiness Directives; Canadair Model CL-600-2A12 (CL-601) and CL-600-2B16 (CL-601-3A) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Canadair Model CL-600-2A12 and CL-600-2B16 series airplanes. This proposal would require a one-time visual inspection to verify proper installation of shoulder bolts and to detect damage of the adjacent flap actuator housings, and correction of discrepancies. This proposal is prompted by a report of failure of the flap actuator on the left wing inboard flap. The actions specified by the proposed AD are intended to prevent

asymmetric deployment or retraction (blow back) of the flaps, which could reduce controllability of the airplane.

DATES: Comments must be received by February 24, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-188-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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Danko Kramar, Aerospace Engineer, Systems and Equipment Branch, ANE-173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6428; fax (516) 791-9024.

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-188-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-188-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Canadair Model CL-600-2A12 (CL-601) and CL-600-2B16 (CL-601-3A) series airplanes. Transport Canada Aviation advises that a report has been received of failure of the flap actuator on the left wing inboard flap at Wing Station 76.50 on one of these airplanes. Subsequent investigation revealed that the ball screw assembly on the flap actuator broke into two pieces approximately 1/2 inch from the shoulder bolt and gearbox housing. The cause of the breakage apparently has been attributed to improper installation of the shoulder bolt that secures the flap actuator trunnion block to the wing trailing edge.

Improper installation of the shoulder bolt could also cause overloading of the ball screw assembly and damage of the gearbox housing, which could result in failure of both actuators on the same flap. If the actuators fail, possible asymmetric deployment or retraction (blow back) of the flaps could occur, which could reduce the controllability of the airplane.

Canadair has issued Alert Service Bulletin A601-0415, dated June 25, 1993, that describes procedures for:

1. Performing a one-time visual inspection to verify proper installation of shoulder bolts and to detect damage of adjacent flap actuator housings;
2. Reinstalling improperly installed shoulder bolts;
3. Performing an eddy current or dye penetrant inspection to detect cracking of the hinge fitting lugs on the flap actuator;
4. Replacing cracked lugs with new or serviceable parts; and
5. Replacing shoulder bolts and damaged flap actuators with new or serviceable parts.

Transport Canada Aviation classified this service bulletin as mandatory and

issued Canadian Airworthiness Directive CF-93-18, dated July 23, 1993 in order to assure the continued airworthiness of these airplanes in Canada.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time visual inspection to verify proper installation of shoulder bolts, and to detect damage of adjacent flap actuator housings. Correction of any discrepancy found would be required prior to further flight. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 196 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed visual inspection, and that the average labor rate is \$55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$10,780, or \$55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

If replacement of any hinge fitting lug, shoulder bolt, or flap actuator is necessary, accomplishment of such replacement would entail approximately 12 work hours, at an average labor rate of \$55 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost of any necessary replacement is estimated to be \$660 per replaced item.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order

12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Canadair: Docket 93-NM-188-AD.

Applicability: Model CL-600-2A12 series airplanes, serial numbers 3002 through 3066, inclusive; and Model CL-600-2B16 series airplanes, serial numbers 5001 through 5131, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent asymmetric deployment or retraction (blow back) of the flaps, which could reduce the controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, conduct a visual inspection to verify the proper installation of shoulder bolts, and to detect damage of adjacent flap actuator housings, in accordance with Canadair Alert Service Bulletin A601-0415, dated June 25, 1993 (hereafter referred to as "the alert service bulletin").

Note: Inspections accomplished prior to the effective date in accordance with Canadair Alert Service Wire TA601-0415-

036, dated May 3, 1993, are considered to be in compliance with this paragraph.

(b) If all shoulder bolts are found to be installed properly and no flap actuator housings are found to be damaged, no further action is required by this AD.

(c) If any shoulder bolt is found to be improperly installed, but no flap actuator housing is found to be damaged, prior to further flight, remove the improperly installed shoulder bolt and reinstall it in accordance with the alert service bulletin.

(d) If any flap actuator housing is found to be damaged (as defined in the alert service bulletin), prior to further flight, accomplish the requirements of paragraphs (d)(1) and (d)(2) of this AD:

(1) Perform either an eddy current inspection or a dye penetrant inspection to detect cracking of the hinge fitting lugs on the flap actuator in accordance with the alert service bulletin. If any cracking is detected, prior to further flight, replace the hinge fitting lug with new or serviceable parts in accordance with the alert service bulletin.

(2) Replace the shoulder bolt and damaged flap actuator with new or serviceable parts in accordance with the service bulletin.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

(f) 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 22, 1993.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-31743 Filed 12-28-93; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 93N-0289 et al.]

RIN 0905-AD08

Food Labeling; Health Claims for Dietary Supplements; Correction

AGENCY: Food And Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the Federal Register of October 14, 1993 (58 FR 53296). The document proposed not to authorize health claims relating to an association between fiber and cancer, fiber and heart disease, antioxidant vitamins and cancer, omega-3 fatty acids and coronary heart disease, and zinc and immune function in the elderly on the label or in the labeling of dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances. The document was published with some errors. This document corrects those errors.

DATES: Written comments by December 13, 1993.

FOR FURTHER INFORMATION CONTACT: Lajuana D. Caldwell, Office of Policy (HF-27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

In FR Doc. 93-25029, appearing on page 53305, in the Federal Register of Thursday, October 14, 1993, the following corrections are made:

§ 101.71 [Corrected]

1. On page 53305, in the 3d column, beginning in line 2, amendatory instruction number 2, is corrected by removing the phrase "of paragraph (a)", and in line 7, the paragraph designation "(a)" is removed from § 101.71 introductory text.

Dated: December 22, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-31717 Filed 12-23-93; 9:11 am]

BILLING CODE 4160-01-F

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 42

[Public Notice 1925]

Visas; Documentation of Immigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Notice of proposed rule.

SUMMARY: This notice proposes regulations to implement sections 201(a)(3), 201(e), 203(c), 203(e)(2), and 204(a)(1)(G) of the Immigration and Nationality Act, as amended. These sections were added to the Act by Public Law 101-649, the Immigration Act of 1990, but with a delayed effective date. Taken together, these sections of

law establish, effective for Fiscal Year 1995 and thereafter, an annual numerical limitation of 55,000 for diversity immigrants. Aliens who are natives of countries determined by specified mathematical computations based upon population totals and totals of specified immigrant admissions over a five-year period will be able to compete for immigration under this limitation.

Selection of immigrants under this limitation will be at random from among those who submit petitions for consideration during application periods established by the Department and who meet certain requirements as to education or occupational qualification.

DATES: Written comments must be received on or before January 28, 1994.

ADDRESSES: Interested persons are invited to submit comments in duplicate to: Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, Department of State, Washington, DC 20522-0113.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, III, Director, Office of Legislation, Regulations, and Advisory Assistance, (202) 663-1184.

SUPPLEMENTARY INFORMATION:

General

Among the major revisions to United States immigration law contained in the Immigration Act of 1990, Public Law 101-649, was the establishment of a permanent system for the selection of immigrants on an at-random basis from among aliens meeting certain requirements who petition for consideration during specified annual application periods. A comparison of the provisions applicable here with those of certain earlier temporary enactments—section 314 of Public Law 99-603 (the NP-5 program), section 3 of Public Law 100-658 (the OP-1 program) and section 132 of Public Law 101-649 (the AA-1 program)—indicates that, both conceptually and operationally, these provisions are modeled upon the earlier ones. There are, however, important differences as well. Where the statutory provisions applicable here track provisions in the earlier enactments, the regulatory provisions based upon them will generally track earlier regulatory provisions.

Numerical Limitations

Section 201(e) specifies that the annual limitation on immigration under section 203(c) shall be 55,000. Section 203(c)(1) establishes a very complex system for the apportionment of the total limitation. The world is divided into six regions for this purpose—

Africa, Asia, Europe, North America (other than Mexico), Oceania, and South America (including Mexico, Central America and the Caribbean).

The Attorney General is required to determine total admissions of preference and immediate relative immigrants over the most recent five-year period for which statistics are available, world-wide, by region and by individual foreign state. Using these figures, the Attorney General is to identify both high admission regions and high admission foreign states. A region whose admissions total is greater than one-sixth of the world-wide total is a high admission region; a region whose admissions total is one-sixth or less of the world-wide total is a low admission region. A foreign state whose admissions total is greater than 50,000 is a high admission foreign state; a foreign state whose admissions total is 50,000 or less is a low admission foreign state.

The Attorney General is next required to determine (using available estimates) the population of each of the six regions (not including the population of any high admission foreign state located in that region) and to use those totals in determining the apportionment of the world-wide limitation of 55,000 among the six regions. The mathematical computations involved are rather complicated, but the underlying objective is to ensure that a greater share of the 55,000 total is apportioned to low admission regions than to high admission regions. In effect, there will be established quotas for each of the six regions and natives of each region will compete for that portion of the total established as the quota for that region. There is, in addition, however, a provision allowing for the unused portion (if any) of a regional quota to be distributed proportionally among the other regions.

Only two provisions specifically address the apportionment of the limitation among individual foreign states. First, high admission states are excluded entirely from the apportionment. Second, there is a limit of 7 percent of the world-wide total—3,850—on the use of visas by natives of any single foreign state.

The Department does not propose to include in its regulations detailed provisions regarding the determinations described above and does not intend to discuss them in greater detail than given above. Section 203(c) imposes upon the Attorney General, not the Secretary of State, the responsibility for making these calculations and determinations. The Department is informed that the Immigration and Naturalization Service

has undertaken this task. That Service will transmit its determinations and calculations to the Department when they are completed. The Department envisions that they will have been received by the time the final rule is ready for promulgation and will include them in the Supplementary Information which will accompany the final rule, as well as giving them appropriate public dissemination through other established means.

Eligibility To Compete

As has been explained above, section 203(c) provides that the number of visas to be made available to natives of high admission countries is zero. For this reason, the Department proposes to prohibit natives of such countries from competing for selection.

It will be noted that the list of such countries may change from year to year since the basis for determining which countries are high admission countries is the total of immediate relative and preference immigrant admissions for the most recent five-year period for which statistics are available. Thus, the Service will have to make the determinations required by statute annually.

The Department is taking this occasion to incorporate the definition of "native" into its permanent regulations. For many years, there was no regulatory definition of this word. In 1991, the Department decided to include one in the regulations promulgated at part 43 of title 22, Code of Federal Regulations, to implement section 132 of Public Law 101-649—the AA-1 program. Those regulations are, however, temporary in character because section 132 is itself limited to a three-year period.

The definition was included in part 43 because of the great volume of questions about the word "native". Part 43 will be repealed in due course, once the final year of the AA-1 program has been completed, and the Department believes it is desirable to establish the definition of "native" on a permanent basis. Substantively, the proposed definition here is identical with that already promulgated in part 43.

Education or Work Experience

Section 203(c)(2) disqualifies from receiving a diversity visa any alien who does not have either a high school education or its equivalent or two years experience (within the five-year period immediately preceding the date of visa application) in an occupation requiring two years or more for qualification in the occupation.

The Department proposes to interpret the phrase "high school education or its equivalent" to apply only to courses of

study. As the Department sees it, the separate provision for qualification on the basis of work experience reflects an intent that this phrase be so interpreted. With respect to the question whether an alien's work experience meets the statutory requirement, the Department proposes to rely upon the "Dictionary of Occupational Titles", published by the Employment and Training Administration of the Department of Labor.

Operationally, the Department saw three possible ways to implement this requirement—(1) require competitors for selection to include documentation of their education or work experience with their applications for selection; (2) require applicants for selection to attest to their education or work experience when applying for selection but require corroborating documents only at the time of visa interview and, therefore, only for those selected; or (3) ignore the requirement entirely in the selection process and deal with the requirement only through the visa processing system and only for those selected.

While the first two alternatives have certain benefits, the operational burdens which would result from adoption of either of them made it necessary to turn to the third alternative. Accordingly, the Department is proposing that applicants for selection not be required to include any information as to their education or work experience in their petition for selection. That information and corroborating documents would be required only of those selected and submitted for review only as part of the formal application for an immigrant visa.

Location of Alien

The Department wishes to answer before it is asked a question which will undoubtedly arise in the minds of those having an interest in this program—whether competition in this program is limited to aliens in the United States or outside the United States. As was the case with the predecessor programs already mentioned above, there is no restriction in this respect on competition. Aliens who otherwise meet the requirements for competition may compete whether they are in the United States or in a foreign country. Moreover, an alien who is in the United States need not be in lawful status to compete.

Form of Application

Those familiar with the predecessors of this program—the NP-5, OP-1, and AA-1 programs—will recall that the Department did not create a formal application form for use by those wishing to compete for selection in

those programs. After considering this question again in this connection, the Department has again concluded that a formal application form should not be created. While there are factors in this program which would support creation of a petition form, theological and other operational problems associated with the creation, printing and distribution world-wide of a petition form argued strongly against doing so.

Accordingly, the Department is proposing that the petition be, as has been the case in the predecessor programs, a blank sheet of paper on which the petitioner will type or legibly print, using the Roman alphabet, his or her name, date and place of birth, and current mailing address. A married petitioner will include the name and date and place of birth of the spouse and of any children.

Mail-in Periods

The Department contemplates that the annual application period will last about one month. The application period for selection for fiscal year 1995 will likely be held in the spring or early summer of 1994 in order to ensure time for the selection of applicants and their notification in time to permit the commencement of visa issuance in the first month of fiscal year 1995 (October 1994).

Mail-in and Selection Process and Requirements

The mail-in and selection processes will be very similar to those employed in the OP-1 program and the last two years of the AA-1 program, but with one important difference. To facilitate the automated processing of the envelopes, the Department is proposing to require that they be between 6 and 9 inches (15 cm to 24 cm) in length and between 3½ and 4½ inches (9 cm to 11 cm) in width, as has been done in the past. As was also the case with the OP-1 and AA-1 programs, envelopes received at the designated address during the mail-in period will be reviewed as received and those meeting the regulatory requirements will be numbered sequentially.

It is here that the procedure must vary from that followed in the OP-1 and AA-1 programs. Because of the establishment of regional quotas, there will have to be a separate numbering sequence for each region in order to ensure that natives of each region are competing only with each other and not with natives of other regions. The Department intends to use numbering sequences as follows—Africa 00,000,001—19,999,999; Asia 20,000,000 39,999,999; Europe

40,000,000—59,999,999; South America 60,000,000—79,999,999; Oceania 80,000,000—89,999,999; North America 90,000,000—99,999,999. The computer program to be used for the actual selection process will have to make six distinct selections, one for each region.

The Department wishes to emphasize the importance of one seemingly minor requirement—that the alien include on the mailing envelope the name of the country of which the alien is a native. Because of the need to sort the envelopes into six groups according to region, identification of the country of which the alien is a native on the envelope becomes indispensable. Accordingly, the Department will set aside and give no further consideration to any envelope which does not bear this information.

Once the envelopes have been sorted and numbered, the computer program will be activated to generate at random the rank order for each region. Thereafter, an appropriate quantity of envelopes identified according to rank order will be opened. The petitions will be reviewed to ensure that each applicant has furnished the necessary information. Those who have not done so will receive no further consideration. For those who have, the processing of the selected applications will be similar to that carried out in the recent AA-1 program.

A notice of selection will be sent to each applicant at the mailing address specified. Instructions for further action will be included with the notice. As has been the case in the predecessor programs, applicants in the United States who meet the requirements for adjustment of status generally will have the option of applying for adjustment of status. Those outside the United States or who, although in the United States, are barred from adjustment of status will have to process their application through the consular office designated.

Also, the Department proposes to make technical amendments to 22 CFR 42.51(b), Allocation of numbers, and 22 CFR 42.54(a)(2), Order of consideration. The proposed technical amendments are designed solely to make the two sections conform more exactly to the statutory requirements for the administration of the numerical limitations applicable to Diversity Immigrants.

Finally, the Department proposes to add a new § 40.104 to part 40 in order to provide an appropriate regulatory basis for the refusal of an application under INA 203(c) because the applicant does not meet either the education or work experience requirement provided in INA 203(c)(2).

This final rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. It has also been reviewed under E.O. 12866 and determined to be consistent therewith.

List of Subjects in 22 CFR Parts 40 and 42

Aliens, Definitions, Documentation, Immigrants, Numerical limitations, Registration, Visas.

Accordingly, it is proposed to amend 22 CFR parts 40 and 42 as follows:

PART 40—[AMENDED]

1. The authority citation for part 40 would continue to read:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), Sec. 131 of Public Law 101-649, 104 Stat. 4997

2. Sec. 40.1 is amended by redesignating paragraphs (l) through (r) as paragraphs (m) through (s), respectively, and by adding a new paragraph (l) to read as follows:

§ 40.1 Definitions.

(l) *Native* shall mean born within the territory of a foreign state, or entitled to be charged for immigration purposes to that foreign state pursuant to section 202(b) of the Immigration and Nationality Act, as amended."

3. Part 40 is further amended by adding a new § 40.104 to subpart K read as follows:

§ 40.104. Applicant for immigrant visa under INA 203(c).

An alien shall be ineligible to receive a visa under INA section 203(c) if the alien does not have a high school education or its equivalent, as defined in 22 CFR 42.33(a)(2), or does not have, within the five years preceding the date of application for such visa, at least two years of work experience in an occupation which requires at least 2 years of training or experience.

PART 42—[AMENDED]

3. The authority citation for part 42 is revised to read:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1); 91 Stat. 847; Sec. 131, 104 Stat. 4997, 8 U.S.C. 1153 note

4. Sec. 42.33 is added to read as follows:

§ 42.33 Diversity immigrants.

(a) *General.* (1) *Eligibility to compete for consideration under INA 203(c)* An alien shall be eligible to compete for consideration for visa issuance under INA 203(c) during a fiscal year only if he or she is a native of a low-admission foreign state, as determined by the Attorney General pursuant to INA 203(c)(1)(E)(i), with respect to the fiscal year in question; and if he or she has at least a high school education or its equivalent or, within the five years preceding the date of application for a visa, has two years of work experience in an occupation requiring at least two years training or experience.

(2) *Definition of "high school education or its equivalent."* For the purposes of this section, the phrase "high school education or its equivalent" shall mean successful completion of twelve years of elementary and secondary education in the United States or successful completion in another country of a formal course of elementary and secondary education comparable to completion of twelve years' elementary and secondary education in the United States.

(3) *Determinations of work experience.* The most recent edition of the "Dictionary of Occupational Titles" published by the Employment and Training Administration, United States Department of Labor, shall be controlling in determining whether a particular occupation is one "which requires at least 2 years of training or experience" as provided in INA 203(c)(2).

(4) *Limitation on number of petitions per year* No more than one petition may be submitted by, or on behalf of, any alien for consideration during any single fiscal year. If two or more petitions for any single fiscal year are submitted by, or on behalf of, any alien, all such petitions shall be void and the alien by or for whom submitted shall not be eligible for consideration for visa issuance during the fiscal year in question.

(5) *Northern Ireland.* For purposes of determining eligibility to file a petition for consideration under INA 203(c) for a fiscal year, the districts comprising that portion of the United Kingdom of Great Britain and Northern Ireland, known as "Northern Ireland" shall be treated as a separate foreign state. The districts comprising "Northern Ireland" are Antrim, Ards, Armagh, Ballymena, Ballymoney, Banbridge, Belfast, Carrickfergus, Castlereagh, Coleraine, Cookstown, Craigavon, Down, Dungannon, Fermanagh, Larne, Limavady, Lisburn, Londonderry,

Magherafelt, Moyle, Newry and Mourne Newtownabbey, North Down, Omagh, and Strabane.

(b) *Petition for consideration—(1) Form of petition.* An alien claiming to be entitled to compete for consideration under INA 203(c) shall file a petition for such consideration. The petition shall consist of a sheet of paper on which shall be typed or legibly printed in the Roman alphabet the petitioner's name; date and place of birth (including city and county, province or other political subdivision, and country); name(s) and date(s) and place(s) of birth of spouse and child[ren], if any; and a current mailing address.

(2) *Submission of petition—(i) General.* A petition for consideration for visa issuance under INA 203(c) shall be submitted by mail to the address designated by the Department for that purpose. The Department shall establish a period of not less than thirty days during each fiscal year during which petitions for consideration during the next following fiscal year may be submitted. Each fiscal year, the Department shall give timely notice of both the mailing address and the exact dates of the application period, through publication in the **Federal Register** and such other methods as will ensure the widest possible dissemination of the information, both abroad and within the United States.

(ii) *Form of mailing.* Petitions for consideration under this section shall be submitted by normal surface or air mail only. Petitions submitted by hand, telegram, FAX, or by any means requiring any form of special handling or acknowledgement of receipt will not be given consideration. The petitioner shall type or print legibly, using the Roman alphabet, on the upper left-hand corner of the envelope in which the petition is mailed his or her full name and mailing address, and the name of the country of which the petitioner is a native, as shown on the petition itself. Envelopes shall be between 6 and 9 inches (15 cm to 24 cm) in length and between 3½ and 4½ inches (9 cm to 11 cm) in width. Envelopes not bearing this information and/or not conforming to the restrictions as to size shall not be processed for consideration.

(c) *Processing of petitions.* Envelopes received at the mailing address during the application period established for the fiscal year in question and meeting the requirements of paragraph (b) shall be assigned a number in a separate numerical sequence established for each regional area specified in INA 203(c)(1)(F). Upon completion of the numbering of all envelopes, all numbers assigned for each region shall be

separately rank-ordered at random by a computer using standard computer software for this purpose. The Department shall then select in the rank orders determined by the computer program a quantity of envelopes for each region estimated to be sufficient to ensure, to the extent possible, usage of all immigrant visas authorized under INA 203(c) for the fiscal year in question.

(d) *Approval of petitions.* Envelopes selected pursuant to paragraph (c) of this section shall be opened and reviewed. Petitions which are legible and contain the information specified in subsection (b) of this section shall be approved for further consideration.

(e) *Validity of approved petitions.* A petition approved pursuant to subsection (d) of this section shall be valid for a period not to exceed Midnight of the last day of the fiscal year for which the petition was submitted.

(f) *Order of consideration.* Further consideration for visa issuance of aliens whose petitions have been approved pursuant to paragraph (d) of this section shall be in the regional rank orders established pursuant to subsection (c) of this section.

(g) *Further processing.* The Department shall inform applicants whose petitions have been approved pursuant to subsection (d) of this section of the steps necessary to meet the requirements of INA 222(b) in order to apply formally for an immigrant visa.

(h) *Maintenance of information concerning petitioners who are visa recipients.* (1) The Department shall compile and maintain the following information concerning petitioners to whom immigrant visas are issued under INA 203(c)—

- (i) Age;
- (ii) Country of birth;
- (iii) Marital status;
- (iv) Sex;
- (v) Level of education; and
- (vi) Occupation and level of occupational qualification.

(2) Names of visa recipients shall not be maintained in connection with this information and the information shall be compiled and maintained in such form that the identity of visa recipients cannot be determined therefrom.

5. Sec. 42.51(b) is revised to read as follows:

§ 42.51 Department control of numerical limitations.

(b) *Allocation of numbers.* Within the foregoing limitations, the Department shall allocate immigrant visa numbers for use in connection with the issuance

of immigrant visas and adjustments based on the chronological order of the priority dates of visa applicants classified under INA 203(a) and (b) reported by consular officers pursuant to § 42.55(b) and of applicants for adjustment of status as reported by officers of the INS, taking into account the requirements of INA 202(e) in such allocations. In the case of applicants under INA 203(c), visa numbers shall be allocated within the limitation for each specified geographical region in the random order determined in accordance with § 42.33(c) of this part.

* * * * *

6. Sec. 42.54(a)(2) is revised to read as follows:

§ 42.54 Order of consideration.

(a) * * *

(2) Beginning with fiscal year 1995, in the random order established by the Secretary of State for each region for the fiscal year for applicants entitled to status under INA 203(c).

Dated: December 14, 1993.
David L. Hobbs,
Deputy Assistant Secretary for Consular Affairs.
 [FR Doc. 93-31528 Filed 12-28-93; 8:45 am]
 BILLING CODE 4710-06-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-93-1684; FR-3415-P-01]

RIN 2506-AB60

Joint Community Development Program: Institutions of Higher Education and States/Units of General Local Government; Special Purpose Grants

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the requirements and procedures for awarding and administering special purpose grants under Title I of the Housing and Community Development Act of 1974, as amended by the Housing and Community Development Act of 1992, to states and units of general local government and institutions of higher education with demonstrated capacity

to carry out eligible activities, that jointly submit applications to HUD.
DATES: Comment due date: February 28, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed rule the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. Copies of all written comments received will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, at the address listed above.

FOR FURTHER INFORMATION CONTACT:
 Jerome B. Friedman, Technical Assistance Division, Office of Technical Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708-3176. The Telecommunications Device for the Deaf (TDD) number is (202) 708-2565. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the Federal Register. Information on these collection requirements is provided later in this preamble under Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

II. Background

Section 801(c)(2) of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) amended section 107 of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) to add a new category of special purpose grants. This new

program authorizes grants to states and units of general local government and institutions of higher education with demonstrated capacity to carry out eligible activities under title I that jointly submit applications to HUD. This rule proposes implementation of this new grant authority. For ease of reference, this new program may be called the Joint Community Development (CD) Program.

III. Summary of Proposed Rule

Following are the highlights of the proposed rule that will govern the grants under the Joint CD Program:

1. A new § 570.411 is being added to Subpart E, Special Purpose Grants, of the Community Development Block Grant (CDBG) regulations to govern grants under this program. It should be noted that § 570.400, which contains general requirements for all special purpose grant programs, applies to this new program as well. Additionally, grantees will have to comply with the Americans with Disabilities Act of 1990.
2. Section 570.411(b) provides definitions for "demonstrated capacity" and "institutions of higher education."
3. Section 570.411(c) defines who the eligible applicants are. It indicates that an application must be filed jointly by

an institution of higher education and a state or unit of general local government. This subsection also states that HUD will fund eligible applicants only once every two funding cycles.

4. Section 570.411(d) spells out the role of each participant in the joint applications.
5. Section 570.411(e) defines the eligible activities as those eligible under the basic CDBG regulations found in subpart C of part 570. It also makes clear that these activities may be designed to assist residents of colonias to improve living conditions and standards within colonias.
6. Section 570.411(f) indicates that the program will be run competitively through publication of a Notice of Funding Availability (NOFA).
7. Section 570.411(g) provides that when an institution of higher education or a state which is a joint applicant proposes to carry out an activity within the jurisdiction of one or more units of general local government, then such governments must approve the activity and indicate that it is not inconsistent with their community development plan or program.
8. Section 570.411(h) provides a general description of what will be contained in each NOFA.

9. Sections 570.411 (i) and (j) detail the selection criteria that HUD will use to evaluate applications under each NOFA competition.

10. Section 570.411(l) spells out that an applicant proposing housing activities will have to provide evidence of consistency with a Comprehensive Housing Affordability Strategy (CHAS) of the jurisdiction to be served.

11. Section 570.411(m) deals with the citizen participation requirement under the Joint CD Program. It is a modified version of the basic CDBG requirement and is similar to that used in other special purpose programs.

12. Section 570.411(n) provides details on environmental review responsibilities for this program.

Other Matters

Public Reporting Burden

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). The Department has determined that the following provisions contain information collection requirements.

ANNUAL REPORTING BURDEN—24 CFR 570.411—JOINT COMMUNITY DEVELOPMENT

	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Application	200	1	200	40	8,000
Quarterly reports	20	4	80	7	560
Final reports	20	1	20	4	80
Recordkeeping	20	1	20	32	640
					9,280

Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies proposed in this proposed rule would not have

Federalism implications when implemented and, thus, are not subject to review under the Order. Nothing in the proposed rule implies any preemption of State or local law, nor does any provision of the proposed rule disturb the existing relationship between the Federal Government and State and local governments.

Executive Order 12606, the Family

The General Counsel, as the designated Official under Executive Order 12606, has determined that this proposed rule would not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Environmental Finding

A Finding of No Significant Impact with regard to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Flexibility

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Undersigned hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities inasmuch as the entities funded

under this program will be relatively few in number. Consequently, HUD does not believe that a significant number of small entities will be affected by this program. The application requirements associated with funding under the program have been kept to the minimum necessary for administration of grant funds, and the Department does not believe it is necessary or appropriate to alter these requirements as they apply to small entities who may be prospective grantees.

Semiannual Agenda

This proposed rule was listed as item 1580 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56438) under Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Joint Community Development Program is listed in the Catalog of Federal Domestic Assistance under number 14.242.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, 24 CFR part 570 is proposed to be amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for 24 CFR part 570 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300-5320.

2. Section 570.411 would be added to subpart E to read as follows:

§ 570.411 Joint Community Development Program.

(a) *General.* Grants under this section will be awarded to states and units of general local government and institutions of higher education having a demonstrated capacity to carry out activities under title I of the Housing and Community Development Act of 1974. For ease of reference, this program may be called the Joint Community Development Program.

(b) *Definitions.* (1) *Demonstrated capacity* to carry out eligible activities under title I means recent satisfactory activity by the institution of higher education's staff designated to work on the program, including subcontractors and consultants firmly committed to work on the proposed activities, in title I programs or similar programs without the need for oversight by a state or unit of general local government.

(2) *Institution of higher education* means a college or university granting 4-year degrees and accredited by a national or regional accrediting agency recognized by the Department of Education.

(c) *Eligible applicants.* States, units of general local government and institutions of higher education. Each application by a state or unit of general local government must be filed jointly in cooperation with an institution of higher education. For all such approved applications, the grant will be made to the state or unit of general local government. Each application by an institution of higher education must be filed by an institution with demonstrated capacity to carry out eligible activities under this part and filed jointly with a state or unit of general local government. For all such approved applications, the grant will be made to the institution of higher education. An eligible applicant will not be funded more frequently than once every other funding cycle. Thus, for the funding cycle after receiving funding, otherwise eligible applicants will not be deemed eligible. A state or unit of general local government will not be funded more frequently than once every other funding cycle even if filing jointly with a different institution of higher education in each cycle. An institution of higher education will not be funded in consecutive funding cycles even if funded one year directly and applying jointly with a state or unit of general local government in the next cycle. HUD may limit the type of eligible applicant to be funded. Any such limitations will be contained in the Notice of Funding Availability described below in paragraph (h) of this section.

(d) *Role of participants in joint applications.* A state, unit of general local government or institution of higher education may carry out eligible activities approved in the joint applications. Where a state or unit of general local government is the recipient, the institution of higher education will serve as a subrecipient. The state or unit of general local government will then be responsible for oversight of and compliance and performance by the institution of higher

education and, if necessary, providing assistance to the institution of higher education. Where the institution of higher education is the recipient, it will be responsible for oversight and compliance and the state or unit of local government will serve as a subrecipient. The application will have to clearly delineate the role of each participant in the joint application. The recipient must have a subrecipient agreement with the subrecipient meeting the requirements of § 570.503. Any funding sanctions or other remedial actions by HUD for noncompliance or nonperformance, whether by the state or unit of general local government or by the institution of higher education, shall be taken against the grantee. The grantee may include appropriate provisions for its rights of recourse in the subrecipient agreement with the subrecipient.

(e) *Eligible activities.* Activities that may be funded under this section are those eligible under 24 CFR part 570—Community Development Block Grants, subpart C—Eligible Activities. These activities may be designed to assist residents of colonias, as defined in section 916(d) of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625), to improve living conditions and standards within colonias. HUD may limit the activities to be funded. Any such limitations will be contained in the Notice of Funding Availability described in paragraph (h) of this section.

(f) *Applications.* Applications will only be accepted from eligible applicants in response to a publication of a Notice of Funding Availability (NOFA) published by HUD in the Federal Register.

(g) *Local approval.* (1) Where an institution of higher education is the applicant, each unit of general local government where an activity is to take place must approve the activity and state the activity is not inconsistent with its community development plan or program.

(2) Where a state is the joint applicant and it proposes to carry out an activity within the jurisdiction of one or more units of general local government, then each such unit must approve the activity and state that the activity is not inconsistent with its community development plan or program.

(3) These approvals and findings must accompany each application and may take the form of a letter by the chief executive officer of each unit of general local government affected or a resolution by the legislative body of each such unit of general local government.

(h) *NOFA contents.* The NOFA will describe any special objectives sought to be achieved by the funding to be provided, including any limitations on the type of activities to be funded to achieve the objectives of the selection criteria, any limitations on the type of eligible applicants, and points to be awarded to each of the selection criteria and any special factors to be evaluated in assigning points under the selection factors to achieve the stated objectives. The NOFA will also state the deadline for the submission of applications, the total funding available for the competition, the period of performance and the maximum and minimum amount of individual grants. The NOFA will also state if HUD will use the various possible levels of competition: National and/or regional; entitlement areas vs. non-entitlement areas; and states or units of general local government/institutions of higher education vs. institutions of higher education with a demonstrated capacity. The NOFA will include further information and instructions for the submission of acceptable applications to HUD.

(i) *Selection criteria.* Each application submitted under this section will be evaluated by HUD using the following criteria:

(1) The extent to which the applicant addresses the objectives published in the NOFA and demonstrates how the proposed activities will have a substantial impact in achieving the objectives.

(2) The extent of the needs to be addressed by the proposed activities, particularly with respect to benefiting low- and moderate-income persons and residents of colonias, where applicable.

(3) The feasibility of the proposed activities, i.e., their technical and financial feasibility, for achieving the stated objectives.

(4) The capability of the applicant to carry out satisfactorily the proposed activities in a timely fashion, including satisfactory performance in carrying out any previous HUD-assisted projects or activities.

(5) The fair housing and equal opportunity record of the community as indicated by previous HUD monitoring/compliance activity.

(j) *Selection discretion.* HUD retains the right to exercise discretion in selecting projects in a manner that would best serve the program objectives, with consideration given to the needs of States and units of general local government and institutions of higher education, types of activities proposed, an equitable geographical distribution, and program balance. The NOFA will

state whether HUD will use this discretion in any specific competition.

(k) *Certifications.* (1) Certifications required to be submitted by applicants shall be as prescribed in the NOFA.

(2) In the absence of independent evidence which tends to challenge in a substantial manner the certifications made by the applicant, the required certifications will be accepted by HUD. If independent evidence is available to HUD, however, HUD may require further information or assurances to be submitted in order to determine whether the applicant's certifications are satisfactory.

(l) *Comprehensive Housing Affordability Strategy (CHAS).* An applicant that proposes any housing activities as part of its application will be required to submit a certification that these activities are consistent with the CHAS of the jurisdiction to be served.

(m) *Citizen participation.* The citizen participation requirements of §§ 570.301 and 570.431 are modified to require the following: The applicant must certify that citizens likely to be affected by the project regardless of race, color, creed, sex, national origin, familial status, or handicap, particularly low- and moderate-income persons, have been provided an opportunity to comment on the proposal or application.

(n) *Environmental and Intergovernmental Review.* The requirements for Intergovernmental Reviews do not apply to these awards. An environmental review in accordance with 24 CFR part 58 must be carried out by the state or unit of general local government when it is the applicant. HUD will conduct the required environmental review when an institution of higher education is the applicant.

Dated: December 1, 1993.

Mark Gordon,

Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 93-31651 Filed 12-28-93; 8:45 am]

BILLING CODE 4210-29-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-72-93]

RIN 1545-AS30

Mark to Market for Dealers In Securities

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 section of this issue of the *Federal Register*, the IRS is issuing temporary regulations to provide guidance concerning the meaning of the statutory terms "dealer in securities," "held for investment," and "security." This guidance will enable taxpayers to comply with the mark-to-market requirements of section 475. The text of the 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 February 28, 1994. Outlines of oral comments to be presented at the public hearing scheduled for Tuesday, April 12, 1994, at 10 a.m. must be received by February 28, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (FI-72-93), 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 (FI-72-93), Internal Revenue Service, room 5228, 1111 Constitution Avenue NW., Washington, DC 20224. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Robert B. Williams at (202) 622-3960 or Jo Lynn Ricks at (202) 622-3920; concerning submissions and the hearing, Regulations Unit, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collections of information are in § 1.475(b)-2. This information is required by the IRS to prevent taxpayers

from identifying some securities held as of the close of the last taxable year ending before December 31, 1993, as held for investment and inconsistently failing to identify other securities similarly held. This information will be used to determine whether securities have been properly excluded from mark-to-market treatment. The likely recordkeepers are business or other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the IRS. Individual recordkeepers may require more or less time, depending on their particular circumstances.

Estimated total annual recordkeeping burden: 25,000 hours.

The estimated annual burden per recordkeeper varies from 15 minutes to 3 hours, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of recordkeepers: 25,000.

Background

Temporary regulations in the Rules and Regulations portion of this issue of the *Federal Register* amend the Income Tax Regulations (26 CFR part 1) relating to section 475 by adding new §§ 1.475(b)-1T, 1.475(b)-2T, 1.475(c)-1T, 1.475(c)-2T, 1.475(d)-1T, and 1.475(e)-1T. The temporary regulations contain rules relating to mark-to-market accounting for dealers in securities.

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 a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, April 12, 1994, at 10 a.m. in the Auditorium, 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 who have submitted written comments by February 28, 1994, and want to present oral comments at the hearing must submit by February 28, 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 authors of these regulations are Robert B. Williams and Jo Lynn Ricks, Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR part 602

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 citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.475(b)-1 also issued under 26 U.S.C. 475(b)(4) and 26 U.S.C. 475(e).

Section 1.475(b)-2 also issued under 26 U.S.C. 475(b)(2), 26 U.S.C. 475(e), and 26 U.S.C. 6001.

Section 1.475(c)-1 also issued under 26 U.S.C. 475(e).

Section 1.475(c)-2 also issued under 26 U.S.C. 475(e) and 26 U.S.C. 860G(e).

Section 1.475(d)-1 also issued under 26 U.S.C. 475(e).

Section 1.475(e)-1 also issued under 26 U.S.C. 475(e). * * *

Par. 2. Sections 1.475(b)-1, 1.475(b)-2, 1.475(c)-1, 1.475(c)-2, 1.475(d)-1, and 1.475(e)-1 are added to read as follows:

§ 1.475(b)-1 Scope of exemptions from mark-to-market requirement.

[The text of this proposed section is the same as the text of § 1.475(b)-1T published elsewhere in this issue of the *Federal Register*.]

§ 1.475(b)-2 Exemptions—Transitional issues.

[The text of this proposed section is the same as the text of § 1.475(b)-2T published elsewhere in this issue of the *Federal Register*.]

§ 1.475(c)-1 Definitions—Dealers in securities.

[The text of this proposed section is the same as the text of § 1.475(c)-1T published elsewhere in this issue of the *Federal Register*.]

§ 1.475(c)-2 Definitions—Items that are not securities.

[The text of this proposed section is the same as the text of § 1.475(c)-2T published elsewhere in this issue of the *Federal Register*.]

§ 1.475(d)-1 Character of gain or loss.

[The text of this proposed section is the same as the text of § 1.475(d)-1T published elsewhere in this issue of the *Federal Register*.]

§ 1.475(e)-1 Effective dates.

[The text of this proposed section is the same as the text of § 1.475(e)-1T published elsewhere in this issue of the *Federal Register*.]

Margaret Milner Richardson.

Commissioner of Internal Revenue.

[FR Doc. 93-31311 Filed 12-28-93; 8:45 am]
BILLING CODE 4830-01-U

26 CFR Part 1

[PS-106-91]

RIN 1545-AQ41

State Housing Credit Ceiling and Other Rules Relating to the Low-Income Housing Credit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed Income Tax Regulations concerning the low-income housing

credit of section 42 of the Internal Revenue Code. The proposed regulations provide rules relating to the order in which housing credit dollar amounts are allocated from each State's housing credit ceiling under section 42(h)(3)(C) and the determination of which States qualify to receive credit from a national pool of credit under section 42(h)(3)(D). The proposed regulations affect State and local housing credit agencies and taxpayers receiving credit allocations, and provide them with guidance for complying with section 42.

DATES: Written comments must be received by February 28, 1994. Requests to appear at a public hearing scheduled for 10 a.m. on April 26, 1994, and outlines of oral comments must be received by April 5, 1994.

ADDRESSES: Send comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, (Attn: CC:DOM:CORP:T:R (PS-106-91), room 5228), Washington, DC 20044. Alternatively, comments, requests to appear at the public hearing, and outlines may be hand delivered to: CC:DOM:CORP:T:R (PS-106-91), Internal Revenue Service, room 5228, 1111 Constitution Ave. NW., Washington, DC 20044. The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, contact Christopher J. Wilson 202-622-3040 (not a toll-free call); concerning the hearing, contact Micahel Slaughter, Regulations Unit, (202) 622-8543 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in this proposed regulation is contained in § 1.42-14(d)(3)(i). This information is required by the Internal Revenue

Service in order to properly account for housing credit dollar amounts that are returned to the state and local housing credit agencies. The likely respondents are state and local housing credit agencies, individuals, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

These estimates are an approximation of the average time expected to be necessary for the collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances. Estimated total reporting burden: 275 hours. The estimated annual burden per State or local government respondent varies from 2 hours to 6 hours, with an estimated average of 4 hours. The estimated annual burden for all other respondents varies from .5 hours to 1.5 hours, with an estimated average of 1 hour. Estimated number of State or local government respondents: 55. Estimated number of all other respondents: 55. Estimated annual frequency of State or local government responses (for reporting requirement only): 4. Estimated annual frequency of all other responses (for reporting requirement only): one time.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 42 of the Internal Revenue Code of 1986. These amendments are proposed to provide guidance under section 42(h)(3), as amended by section 7108(b) of the Omnibus Budget and Reconciliation Act of 1989. Section 42(h)(3) provides rules for determining the housing credit dollar amount available to housing credit agencies for allocation in any given calendar year.

Explanation of Provisions

Section 42 provides for a low-income housing credit that may be claimed as part of the general business credit under section 38. In general, the credit is allowable only if the owner of a qualified low-income building receives a housing credit allocation from a State or local housing credit agency (Agency) of the jurisdiction where the building is located.

The aggregate housing credit dollar amount that an Agency may allocate for any calendar year is limited to the State housing credit ceiling apportioned to the Agency for that year. Under section 42(h)(3)(C), the State housing credit ceiling of any State for any calendar

year is an amount equal to the sum of: (a) \$1.25 multiplied by the State population (the population component); (b) the unused State housing credit ceiling, if any, of the State for the preceding calendar year (the unused carryforward component); (c) the amount of State housing credit ceiling returned in the calendar year (the returned credit component); plus (d) the amount, if any, allocated to the State by the Secretary under section 42(h)(3)(D) from a national pool of unused credit (the national pool component).

The proposed regulations set forth the rules governing the order in which credit is allocated from the various components of the State housing credit ceiling under section 42(h)(3)(C) (the stacking rules). In general, under the stacking rules, credit is allocated first from the sum of the population and returned credit components, then from the unused carryforward component, and finally from the national pool component. The proposed regulations also reflect the statutory rule that unallocated credit attributable to the national pool component cannot be carried forward, and therefore is not included in the carryforward component for the following year. In addition, the regulations provide that no credit allocated prior to calendar year 1990, and no credit allowable under section 42(h)(4) (relating to the portion of credit attributable to eligible basis financed by certain tax-exempt obligations under section 103), may be returned for reallocation; thus, this credit is not included in the returned credit component for any year.

The proposed regulations permit an Agency to treat credit returned from a project to the Agency after October 31 of any calendar year and not reallocated by the Agency by the close of the year as returned at the beginning of the succeeding calendar year. For example, an Agency that receives returned credit from a project in November and does not have an opportunity to reallocate the credit by the end of the year may treat the credit as returned on January 1 of the following year (the two-month rule). If so treated, the credit becomes part of the returned credit component of the State housing credit ceiling for the succeeding calendar year.

The proposed regulations also provide guidance on satisfying the requirement of section 42(h)(5) and § 1.42-1T(c)(5) that credit be set aside for projects involving nonprofit organizations (the nonprofit set-aside). Under the regulations, the nonprofit set-aside is determined annually by reference to the total State housing credit ceiling of the State, and not to each component of the

State housing credit ceiling. Therefore, Agencies need not track each component of the State housing credit ceiling to ensure that at least 10 percent of each component is set aside for projects involving nonprofit organizations, provided that 10 percent of the total State housing credit ceiling is set aside for those projects. Agencies also need not track whether credit that was allocated in a calendar year and returned in a subsequent year was credit that was allocated from the nonprofit set-aside for the calendar year of the initial allocation.

Under section 42(h)(3)(D), States that have unused housing credit carryovers must assign them to the Secretary for inclusion in a national pool of unused credit (the National Pool), and the Secretary must allocate National Pool credit among qualified States. The proposed regulations provide rules for: (a) Calculating the unused housing credit carryover of a State; (b) determining which States are "qualified States" eligible to participate in the National Pool; and (c) determining the amount of credit reallocated from the National Pool to each qualified State.

As a general rule, if there is any unallocated credit within the State at the close of a calendar year, the State is not a qualified State and is ineligible to receive an allocation of credit from the National Pool the subsequent calendar year. Because of the two-month rule discussed above, unanticipated returns of credit at year-end need not disqualify States from the National Pool. In addition, the proposed regulations provide an exception for States that have a de minimis amount of unallocated credit remaining in their State housing credit ceiling at the close of a calendar year. Under the proposed regulations, a de minimis amount is not more than 1% of the State housing credit ceiling for the year. In determining whether there is any unallocated credit within the State at the close of a calendar year, and in applying the de minimis rule, the housing credit dollar amounts apportioned to all Agencies within the State (including Agencies of constitutional home rule cities in the State) and the allocations of all Agencies within the State are considered.

In addition to the 1% de minimis rule, the proposed regulations provide that in other circumstances where relief is deemed appropriate, the Internal Revenue Service may determine that a State is a qualified State eligible to participate in the National Pool. The Service is specifically interested in receiving comments on the types of circumstances where relief should be

granted to qualify a State for the National Pool, and whether this relief is necessary given the opportunity States have to correct administrative errors and omissions, the two-month rule for returned credits, and the 1% de minimis rule.

Proposed Effective Date

These proposed regulations are proposed to be effective January 1, 1994.

Special Analyses

It has been determined that these proposed rules do not constitute 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, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of this notice of proposed rulemaking is being sent to the Chief Counsel for Advocacy of the Small Business Administration for comment on the regulations 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 Internal Revenue Service. All comments will be available for public inspection and copying.

A public hearing will be held on Tuesday, April 26, 1994, at 10 a.m. in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply to the public hearing.

Persons who have submitted written comments by February 28, 1994, and who also desire to present oral comments at the hearing on the proposed regulations, should submit, not later than April 5, 1994, a request to speak and an outline of the oral comments to be presented at the hearing stating the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building before 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Christopher J. Wilson, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

List of Subjects in 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 TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1993

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805; * * * § 1.42-14 is also issued under 26 U.S.C. 42(n). * * *

Par. 2. New § 1.42-14 is added to read as follows:

§ 1.42-14 Allocation rules for post-1989 State housing credit ceiling amounts.

(a) *In general.* The State housing credit ceiling for a State for any calendar year after 1989 is comprised of four components. The four components are:

(1) \$1.25 multiplied by the State population (the population component);
 (2) The unused State housing credit ceiling, if any, of the State for the preceding calendar year (the unused carryforward component);

(3) The amount of State housing credit ceiling returned in the calendar year (the returned credit component); plus

(4) The amount, if any, allocated to the State by the Secretary under section 42(h)(3)(D) from a national pool of unused credit (the national pool component).

(b) *The population component.* The population component of the State housing credit ceiling of a State for any calendar year is determined pursuant to section 146(j). Thus, a State's population for any calendar year is determined by reference to the most

recent census estimate, whether final or provisional, of the resident population of the State released by the Bureau of the Census before the beginning of the calendar year for which the State's housing credit ceiling is set. Unless otherwise prescribed by applicable revenue procedure, determinations of population are based on the most recent estimates of population contained in the Bureau of the Census publication, "Current Population Report, Series P-25; Population Estimates and Projections, Estimates of the Population of States." For convenience, the Internal Revenue Service publishes the population estimates annually.

(c) *The unused carryforward component.* The unused carryforward component of the State housing credit ceiling for any calendar year is the excess, if any, of the sum of the population and returned credit components, over the aggregate housing credit dollar amount allocated for the year. Any credit amounts attributable to the national pool component of the State housing credit ceiling that remain unallocated at the close of a calendar year are not carried forward to the succeeding calendar year; instead, the credit expires and cannot be reallocated by any Agency.

(d) *The returned credit component—*
 (1) *In general.* The returned credit component of the State housing credit ceiling for any calendar year equals the housing credit dollar amount returned during the calendar year that was validly allocated within the State in a prior calendar year to any project that does not become a qualified low-income housing project within the period required by section 42, or as required by the terms of the allocation. The returned credit component also includes credit allocated in a prior calendar year that is returned as a result of the cancellation of an allocation by mutual consent or by an Agency's determination that the amount allocated is not necessary for the financial feasibility of the project. For purposes of this section, credit is allocated within a State if it is allocated from the State's housing credit ceiling by an Agency of the State or of a constitutional home rule city in the State.

(2) *Limitations and special rules.* The following limitations and special rules apply for purposes of this paragraph (d).

(i) *General limitations.*

Notwithstanding any other provision of this paragraph (d), returned credit does not include any credit that was—

(A) Allocated prior to calendar year 1990;

(B) Allowable under section 42(h)(4) (relating to the portion of credit

attributable to eligible basis financed by certain tax-exempt obligations under section 103); or

(C) Allocated during the same calendar year that it is received back by the Agency.

(ii) *Credit period limitation.*

Notwithstanding any other provision of this paragraph (d), an allocation of credit may not be returned any later than 180 days following the close of the first taxable year of the credit period for the building that received the allocation. After this date, credit that might otherwise be returned expires, and cannot be returned to or reallocated by any Agency.

(iii) *Two-month rule for returned credit.* An Agency may, in its discretion, treat credit that is returned from a project after October 31 of a calendar year and that is not reallocated by the close of the calendar year as returned on January 1 of the succeeding calendar year. In this case, the returned credit becomes part of the returned credit component of the State housing credit ceiling for the succeeding calendar year.

(iv) *Returns of credit.* Subject to the limitations of paragraph (d)(2) (i) and (ii) of this section, credit is returned to the Agency in the following instances in the manner described in paragraph (d)(3) of this section.

(A) *Building not qualified within required time period.* If a building is not a qualified building within the time period required by section 42, it loses its credit allocation and the credit is returned. A building is not qualified within the required time period if it is not placed in service within the period required by section 42 or if the project of which the building is a part fails to meet the minimum set-aside requirements of section 42(g)(1) by the close of the first year of the credit period.

(B) *Noncompliance with terms of the allocation.* If a building does not comply with the terms of its allocation, it loses the credit allocation and the credit is returned. The terms of an allocation are the written conditions agreed to by the Agency and the allocation recipient in the allocation document. However, if the terms of the allocation violate any requirement of section 42, the allocation is not valid and is treated as if it had not been made; in this case the credit is treated as if it had not been allocated, and is not a returned credit.

(C) *Mutual consent.* If the Agency and the allocation recipient cancel an allocation of an amount of credit by mutual consent, that amount of credit is returned.

(D) *Amount not necessary for financial feasibility.* If an Agency

determines under section 42(m)(2) that an amount of credit allocated to a project is not necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period, that amount of credit is returned.

(3) *Manner of returning credit—*(i) *Taxpayer notification.* After an Agency determines that a building or project no longer qualifies under paragraph (d)(2)(iv)(A), (B), or (D) of this section for all or part of the allocation it received, the Agency must provide written notification to the allocation recipient, or its successor in interest, that all or part of the allocation is no longer valid. The notification must also state the amount of the allocation that is no longer valid. The date of the notification is the date the credit is returned to the Agency. If an allocation is cancelled by mutual consent under paragraph (d)(2)(iv)(C) of this section, there must be a written agreement signed by the Agency, and the allocation recipient, or its successor in interest, indicating the amount of the allocation that is returned to the Agency. The date of the agreement is the date the credit is returned to the Agency.

(ii) *Internal Revenue Service notification.* If a credit is returned within 180 days following the close of the first taxable year of the building's credit period as provided in paragraph (d)(2)(ii) of this section, and a Form 8609 has been issued for the building, the Agency must notify the Internal Revenue Service (Service) that the credit has been returned. The Service should be notified as prescribed in § 1.42-5(e)(3). If the building is eligible for a reduced credit, the Form 8609 should be amended to reflect the reduction in credit.

(e) *The national pool component.* The national pool component of the State housing credit ceiling of a State for any calendar year is the portion of the National Pool allocated to the State by the Secretary for the calendar year. The national pool component for any calendar year is zero unless a State is a "qualified State". (See paragraph (i) of this section for rules regarding the National Pool and the description of a qualified State.) Credit from the national pool component of a State housing credit ceiling must be allocated prior to the close of the calendar year or the credit expires and cannot be reallocated by any Agency. A national pool component credit that is allocated during a calendar year and returned after the close of the calendar year may qualify as part of the returned credit component of the State housing credit

ceiling for the calendar year that the credit is returned.

(f) *When the State housing credit ceiling is determined.* For purposes of accounting for the State housing credit ceiling on Form 8610, Annual Low-Income Housing Credit Agencies Report, and for purposes of determining the set-aside apportionment for projects involving qualified nonprofit organizations described in section 42(h)(5) and § 1.42-1T(c)(5), the State housing credit ceiling for any calendar year is determined at the close of the calendar year.

(g) *Stacking order.* Under section 42(h)(3)(C), credit is treated as allocated from the various components of the State housing credit ceiling in the following order. The first credit allocated for any calendar year is treated as credit from the sum of the population and returned credit components of the State housing credit ceiling. Once all of the credit in these components has been allocated, the next credit allocated is treated as credit from the unused carryforward component of the State housing credit ceiling. Finally, after all of the credit from the population component, returned credit component, and unused carryforward component has been allocated, any further credit allocated is treated as credit from the national pool component.

(h) *Nonprofit set-aside—(1) Determination of set-aside.* Under section 42(h)(5) and § 1.42-1T(c)(5), at least 10 percent of a State housing credit ceiling in any calendar year must be set aside exclusively for projects involving qualified nonprofit organizations (the nonprofit set-aside). However, credit allocated from the nonprofit set-aside in a calendar year and returned in a subsequent calendar year does not retain its nonprofit set-aside character. The credit becomes part of the returned credit component of the State housing credit ceiling for the calendar year that the credit is returned, and must be included in determining the nonprofit set-aside of the State housing credit ceiling for that calendar year. Similarly, credit amounts that are not allocated from the nonprofit set-aside in a calendar year and are returned in a subsequent calendar year become part of the returned credit component of the State housing credit ceiling for that year, and are also included in determining the set-aside for that year.

(2) *Allocation rules.* An Agency may allocate credit from any component of the State housing credit ceiling as part of the nonprofit set-aside, and need not reserve 10 percent of each component for the nonprofit set-aside. Thus, an Agency may satisfy the nonprofit set-

aside requirement of section 42(h)(5) and § 1.42-1T(c)(5) in any calendar year by setting aside for allocation, from any one or more components of the State housing credit ceiling, an amount equal to at least 10 percent of the total State housing credit ceiling for the calendar year.

(i) *National Pool—(1) In general.* The unused housing credit carryover of a State for any calendar year is assigned to the Secretary for inclusion in a national pool of unused housing credit carryovers (the National Pool) that is reallocated among qualified States the succeeding calendar year. The assignment to the Secretary is made on Form 8610.

(2) *Unused housing credit carryover.* The unused housing credit carryover of a State for any calendar year is the excess, if any, of the unused carryforward component of the State housing credit ceiling for the calendar year over the excess, if any, of—

- (i) The total housing credit dollar amount allocated for the year, over
- (ii) The sum of the population and returned credit components of the State housing credit ceiling for the year.

(3) *Qualified State—(i) In general.* The term "qualified State" means, with respect to any calendar year, any State that has allocated its entire State housing credit ceiling for the preceding calendar year and for which a request is made by the State, not later than May 1 of the calendar year, to receive an allocation of credit from the National Pool for that calendar year. Except as provided in paragraph (i)(3)(ii) of this section, a State is not a qualified State in a calendar year if there remains any unallocated credit in its State housing credit ceiling at the close of the preceding calendar year that was apportioned to any Agency within the State for the calendar year.

(ii) *Exceptions—(A) De minimis amount.* If the amount remaining unallocated at the close of a calendar year is only a de minimis amount of credit, the State is a qualified State eligible to participate in the National Pool. A credit amount is de minimis if it does not exceed 1 percent of the aggregate State housing credit ceiling of the State for the calendar year.

(B) *Other circumstances.* The Internal Revenue Service may, under appropriate circumstances, determine that a State is a qualified State eligible to participate in the National Pool even though the State's unallocated credit is not a de minimis amount.

(iii) *Time and manner for making request.* The time and manner for making a request of housing credit dollar amounts from the National Pool

by a qualified State is prescribed in Rev. Proc. 92-31, 1992-1 C.B. 775.

(4) *Formula for determining the National Pool.* The amount allocated to a qualified State in any calendar year is an amount that bears the same ratio to the aggregate unused housing credit carryovers of all States for the preceding calendar year as that State's population for the calendar year bears to the population of all qualified States for the calendar year.

(j) *Coordination between Agencies.* The Agency responsible for filing Form 8610 on behalf of all Agencies within a State and making any request on behalf of the State for credit from the National Pool (the Filing Agency) must coordinate with each other Agency within the State to ensure that the various requirements of this section are complied with. For example, the Filing Agency of a State must ensure that all Agencies within the State that were apportioned a credit amount for the calendar year have allocated all their respective credit amounts for the calendar year before the Filing Agency can make a request on behalf of the State for the distribution of credit from the National Pool.

(k) *Examples.* The operation of the rules of this section may be illustrated by the following examples. Unless otherwise stated in an example, Agency A is the sole Agency authorized to make allocations of housing credit dollar amounts in State M, all of Agency A's allocations are valid, and for calendar year 1994 Agency A has available for allocation a State housing credit ceiling consisting of the following housing credit dollar amounts:

A. Population component	\$100
B. Unused carryforward component	50
C. Returned credit component	10
D. National pool component	0
Total	160

In addition, the \$10 of returned credit component was returned before November 1, 1994.

Example (1)—(i) Additional facts. By the close of 1994, Agency A had allocated \$80 of the State M housing credit ceiling. Of the \$80 allocated, \$16 was allocated to projects involving qualified nonprofit organizations.

(ii) *Application of stacking rules.* The first credit allocated is treated as allocated from the population and returned credit components of the State housing credit ceiling, to the extent of those components. In this case, the \$80 of credit allocated is less than the sum of the population and returned credit components. The excess of the sum of the population and returned credit components over the total amount allocated for the calendar year (\$110 - \$80 = \$30) becomes the unused carryforward component of State M's 1995 State housing credit ceiling.

Because Agency A did not allocate credit in excess of the sum of the population and returned credit components, no credit is treated as allocated from State M's \$50 unused carryforward component in 1994. Because none of this component may be carried forward, all \$50 is assigned to the Secretary for inclusion in the National Pool. Under paragraph (i)(3) of this section, State M does not qualify for credit from the National Pool for the 1995 calendar year.

(iii) *Nonprofit set-aside.* Agency A allocated exactly the amount of credit to projects involving qualified nonprofit organizations as necessary to meet the nonprofit set-aside requirement (\$16, 10% of the \$160 ceiling).

Example (2)—(i) Additional facts. By the close of 1994, Agency A had allocated \$130 of the State M housing credit ceiling. Of the \$130 allocated, \$20 was allocated to projects involving qualified nonprofit organizations.

(ii) *Application of stacking rules.* The first \$110 of credit allocated is treated as allocated from the population and returned credit components. In this case, because all of the population and returned credit components are allocated, no amount is included in State M's 1995 State housing credit ceiling as an unused carryforward component. The next \$20 of credit allocated is treated as allocated from the \$50 unused carryforward component. The \$30 remaining in the unused carryforward component is assigned to the Secretary for inclusion in the National Pool for the 1995 calendar year. Under paragraph (i)(3) of this section, State M does not qualify for credit from the National Pool for the 1995 calendar year.

(iii) *Nonprofit set-aside.* Agency A allocated \$4 more credit to projects involving qualified nonprofit organizations than necessary to meet the nonprofit set-aside requirement. This does not reduce the application of the 10% nonprofit set-aside requirement to the State M housing credit ceiling for the succeeding year.

Example (3)—(i) Additional fact. None of the applications for credit that Agency A received for 1994 were for projects involving qualified nonprofit organizations.

(ii) *Nonprofit set-aside.* Because at least 10% of the State housing credit ceiling must be set aside for projects involving a qualified nonprofit organization, Agency A can allocate only \$144 of the \$160 State housing credit ceiling for calendar year 1994 (\$160 - 16 = \$144). If Agency A allocates \$144 of credit, the credit is treated as allocated \$110 from the population and returned credit components and \$34 from the unused carryforward component. The \$16 of unallocated credit that is set aside for projects involving qualified nonprofit organizations is treated as the balance of the unused carryforward component, and is assigned to the Secretary for inclusion in the National Pool. Under paragraph (i)(3) of this section, State M does not qualify for credit from the National Pool for the 1995 calendar year.

Example (4)—(i) Additional facts. The \$10 of returned credit component was returned prior to November 1, 1994. However, a \$40 credit that had been allocated in calendar year 1993 to a project involving a qualified

nonprofit organization was returned to the Agency by a mutual consent agreement dated November 15, 1994. By the close of 1994, Agency A had allocated \$160 of the State M housing credit ceiling, including \$16 of credit to projects involving qualified nonprofit organizations.

(ii) *Effect of two-month rule.* Under the two-month rule of paragraph (d)(2)(iii) of this section, Agency A may treat the \$40 of previously allocated credit as returned on January 1, 1995. If Agency A treats the \$40 amount as having been returned in calendar year 1995, the State M housing credit ceiling for 1994 is \$160. This entire amount, including the \$16 nonprofit set-aside, has been allocated in 1994. Under paragraph (i)(3) of this section, State M qualifies for the National Pool for the 1995 calendar year.

(iii) *If two-month rule not used.* If Agency A treats the \$40 of previously allocated credit as returned in calendar year 1994, the State housing credit ceiling for the 1994 calendar year will be \$200 of which \$50 will be attributable to the returned credit component (\$10+\$40=\$50). Because credit amounts allocated in a prior calendar year that are returned in a subsequent calendar year do not retain their nonprofit character, the nonprofit set-aside for calendar year 1994 is \$20 (10% of \$200). The \$160 that Agency A allocated during 1994 is first treated as from the population and returned credit components, which total \$150. The next \$10 of credit allocated is treated as from the unused carryforward component. The \$40 of unallocated credit from the unused carryforward component includes the \$4 of unallocated nonprofit set-aside. The entire \$40 of unallocated credit from the carryforward component is assigned to the Secretary for inclusion in the National Pool for the 1995 calendar year. State M does not qualify for credit from the National Pool for the 1995 calendar year.

Example 5—(i) Additional facts. For calendar year 1994, Agency A has a State housing credit ceiling that consists of the following housing credit dollar amounts:

A. Population component	\$100
B. Unused carryforward component	0
C. Returned credit component	20
D. National pool component	10
Total	\$130
Minimum nonprofit set-aside	13
Ceiling amount not set-aside	117

In addition, the \$20 of returned credit component was returned before November 1, 1994. By the close of 1994, Agency A had allocated \$100 of the State housing credit ceiling.

(ii) *Application of stacking rules.* The \$20 excess of the sum of the population component and the returned credit component over the total amount allocated for the calendar year (\$120 - 100 = \$20) becomes the unused carryforward component of the State housing credit ceiling for the 1995 calendar year. The \$10 of unallocated credit from the national pool component expires and cannot be reallocated. This amount is neither carried over to 1995 by State M nor assigned to the Secretary for inclusion in the National Pool. Under

paragraph (i)(3) of this section, State M does not qualify for credit from the National Pool for the 1995 calendar year.

(1) *Effective date.* The rules set forth in this notice of proposed rulemaking are proposed to be effective January 1, 1994.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 93-31739 Filed 12-28-93; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 71

[AD-FRL-4817-1]

Federal Operating Permit Programs; Permits for Early Reductions Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(i)(5) of the Clean Air Act (Act), a rule governing the granting of compliance extensions for sources achieving early reductions of hazardous air pollutants (HAPs) was promulgated in the Federal Register on December 29, 1992. Sources qualifying for a compliance extension under the Early Reductions Rule must obtain a permit containing an emission limitation to ensure that the early reductions are maintained throughout the compliance extension period and are federally enforceable. This rulemaking would establish an interim permitting mechanism for such sources until permanent permitting programs become effective pursuant to title V of the Clean Air Act (Act), as amended.

Also proposed in this rule is an amendment to the Early Reductions Rule which would append to an enforceable commitment information on emission reduction measures employed to achieve early reductions. This proposed change would enhance the enforceability of such a commitment.

DATES: Comments. Comments must be received on or before January 28, 1994.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by January 12, 1994, a public hearing will be held on January 26, 1994 beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Deanna Allen at (919) 541-5573 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by January 12, 1994.

ADDRESSES: Comments. Comments should be submitted (in duplicate if

possible) to: Air Docket (LE-131), Attention Docket Number A-93-08 (see Docket section below), room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Docket. Docket No. A-93-08, containing supporting information used in developing the proposed rule is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. A reasonable fee may be charged for copying.

All information used in the development of the proposed amendment to the Early Reductions Rule is contained in the preamble below. However, Docket No. A-90-47, containing the supporting information for the original Early Reductions Rule, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room M-1500, 1st floor, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. David Beck, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5421.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

- I. Background and Purpose for Proposed Permits Rule
 - A. The Early Reductions Program
 - B. Permitting Problem under Early Reductions
 - C. The EPA's Proposed Solution
 - D. Implementation
- II. Summary of and Rationale for Proposed Permits Rule
 - A. Program Overview
 - B. Permit Applications
 - C. Permit Content
 - D. Permit Issuance, Reopenings, and Revisions
 - E. Public Participation and Administrative Review
- III. Summary of and Rationale for Proposed Amendment to Early Reductions Rule
- IV. Administrative Requirements

I. Background and Purpose for Proposed Permits Rule

A. The Early Reductions Program

The Clean Air Act Amendments of 1990 revised section 112 of the Act, which directs the EPA to establish national emission standards for hazardous air pollutants (HAP). A new provision, section 112(i)(5), offers to sources that achieve substantial early

reductions of HAP emissions an extension in complying with applicable standards to be promulgated under section 112(d). Specifically, the early reductions provision allows an existing source emitting HAPs to be granted a six-year extension of compliance with an otherwise applicable section 112(d) standard upon demonstration by the owner or operator of the source that it has achieved, prior to certain dates, a HAP reduction of 90 percent or more from established base year emission levels (95 percent or more for HAPs which are particulate matter). Generally, sources would have to achieve the 90 (95) percent reduction prior to proposal of an applicable section 112(d) standard. However, sources that would be subject to early section 112(d) standards also have the option of participating by making an enforceable commitment, prior to proposal of an applicable section 112(d) standard, to achieve the 90 (95) percent reduction before January 1, 1994. For sources successfully demonstrating qualifying HAP reductions, a permit would be issued granting the source the six-year compliance extension and containing a federally enforceable alternative emission limitation reflecting the qualifying reduction.

On December 29, 1992, the EPA promulgated in the *Federal Register* (57 FR 61970) an implementing rule for the Early Reductions provision of the Act. The Early Reductions Rule established procedures and requirements for source owners or operators wishing to obtain the six-year compliance extension.

B. Permitting Problem Under Early Reductions

Prior to promulgation of the Early Reductions Rule, the EPA anticipated that permit applications for section 112(i)(5) compliance extensions simply would be part of a comprehensive title V permit application for the entire plant site, since section 112(i)(5)(D) of the Act specifies that sources granted compliance extensions must have their alternative emission limitations embodied in a permit issued pursuant to title V of the Act. Under section 504(a) of the Act, a comprehensive title V permit application would encompass all Act requirements applicable to all emitting units at the plant site, not just the alternative emission limitation related to the early reductions source. (An early reductions source can consist of a designated subgroup of all HAP emitting units at the facility.) These applications were to have been processed by States with approved title V permitting programs or, where a State program had not yet been approved, by

the EPA pursuant to regulations anticipated to be promulgated for Federal title V permitting (future part 71 rule).

Shortly before the rule for the Early Reductions Program was promulgated, it became apparent that neither State nor Federal comprehensive title V permitting programs would be in place in time to process the initial early reductions permit applications which will be filed by April 30, 1994. States are not required to submit title V permit programs to the EPA for approval until November 15, 1993, and EPA has until November 15, 1994 to approve or disapprove the State's proposed program. Additionally, a Federal title V permit program, which primarily would be used when a State has failed to obtain approval of a title V program, likely will not be promulgated until 1995.

C. The EPA's Proposed Solution

Since there will be no comprehensive title V permit issuance mechanism available to process initial early reductions related permit applications, the EPA is proposing in today's notice to establish a title V program limited to implementation of the Early Reductions Program. The legal rationale for establishing such a limited Federal permit program under title V is expanded upon below.

The EPA considered various alternatives for implementing the Early Reductions Program in advance of the comprehensive title V program. The first alternative was to delay any permit application deadlines for early reductions sources until a title V permitting mechanism was available. Although this option would be the simplest to implement administratively, it has several drawbacks. Primarily, section 112(i)(5) evidences an intent that alternative emission limitations are to be embodied in a permit issued pursuant to title V. The EPA therefore believes that, to be consistent with the Act, it must make the title V permit the implementing vehicle for the Early Reductions Program, except where it would be strictly infeasible to do so.

In addition to this legal consideration, permit issuance delays under this option could be significant, possibly a year or two behind original expectations. The delay would mean that a source owner or operator would not know for a considerable length of time whether the EPA (or other permitting authority) would approve the early reduction demonstration and grant a compliance extension from a section 112(d) standard. If the extension is not granted, the source may have little if

any time to prepare to meet an impending section 112(d) standard compliance deadline. Additionally, this option would allow participating sources to operate without a permit for possibly two years or more after the early reductions were required to be achieved, which is not desirable from an enforcement standpoint. For these reasons this option was rejected.

Another alternative was to use federally enforceable permit programs already in effect. Some states have permitting functions which are federally enforceable under State Implementation Plans. Presumably, this mechanism could be adapted to handle early reductions permit applications. However, as with the first alternative described above, this alternative is flawed in that it does not utilize the permitting mechanism intended by the Act, namely, title V.

In addition, under this scenario the EPA still would have to promulgate a rule or at least issue guidance describing how such existing permit programs would have to be modified for the writing of early reductions permits, with additional time spent approving the modified programs. Moreover, not all States have federally enforceable air permit programs, and some other mechanism must be sought in those instances. This option therefore did not offer a complete solution to the problem, although it could be considered for use where federally enforceable State permit programs exist and where no State or Federal title V mechanism has been established.

A third alternative considered and eventually selected by EPA was the establishment of a new permit program tailored to the Early Reductions Program. Again, however, any such program would be flawed from a legal standpoint if it was not established under the authority in title V. Furthermore, the establishment of a special early reductions permit program apart from title V would be needlessly redundant since EPA considers title V permits to be an adequate vehicle for alternative emission limitations, and since these limitations will eventually need to be incorporated into the State-issued, comprehensive, title V permits once they are available.

D. Implementation

This rule establishing the specialty permits program may not be promulgated until after the April 30, 1994 permit application deadline for early reductions sources subject to enforceable commitments. Therefore, applications submitted by that date may have to be based on the requirements

contained in today's proposed rule. The EPA will begin evaluation of applications submitted by April 30, 1994, but will not issue any specialty permits until after promulgation of this rule. Should the promulgated rule differ from this proposed rule such that permit applications already submitted need to be revised, the owner or operator will be notified of the change(s) and asked to amend the original application.

II. Summary of and Rationale for Proposed Permits Rule

The proposed rule describes an interim, Federal, title V permit program specific to hazardous air pollutant emissions from sources participating in the Early Reductions Program. It is meant only to fill the need to issue timely permits to these sources in the interval prior to the availability of a comprehensive title V permitting mechanism and does not change a source's obligations under title V of the Act. Therefore, companies issued specialty title V permits under this rule still must file comprehensive title V permit applications as required after State title V permit program approval occurs and the specialty permit eventually would become part of the comprehensive permit issued for the plant site.

The EPA believes there is ample authority under the CAA to issue specialty title V permits in this instance. Permits issued pursuant to the rule would meet all the requirements of title V, with the exception of section 504(a). Section 504(a) requires that each title V permit assure compliance with all applicable requirements of the Act. EPA reads the general mandate of section 504(a) in conjunction with section 112(i)(5) to allow narrower specialty permits that address only the alternative emissions limitation.

While this reading does not appear to be fully consistent with the literal language of section 504(a) standing alone, it is necessary in order to meet Congress' goals with respect to the Early Reductions program. If section 504(a) were read to require title V permits issued to early reductions sources to assure compliance with all applicable requirements (which, under the part 70 regulation, includes, at a minimum, SIP requirements and existing NESHAP and NSPS standards), significant delay in permit issuance to such sources would occur, compromising the viability of the Early Reductions Program. Unless an Early Reductions source is able to obtain a specialty title V Early Reductions permit before it is issued a comprehensive title V permit, it would in effect be required to achieve early

emissions reductions and maintain those reductions while remaining at peril of enforcement of the relevant section 112(d) standard (because the evaluation of the reduction demonstration and granting of the compliance extension occurs in the context of permit issuance). Moreover, without the specialty permit, the permitting authority has no way to enforce the required emissions reduction against the source.

This reading is consistent with the purpose of section 504(a), which is to assure that permits issued pursuant to a comprehensive title V program address all applicable requirements. Nothing in this proposed rule would affect part 70 requirements to issue permits that address all applicable requirements. The main functions of this rule are to set requirements for permit applications and permit content and establish procedures for permit issuance and revision. The rule was composed by adapting provisions from the promulgated part 70 rule (57 FR 32250, July 21, 1992) for State title V permitting programs to fit the needs of this interim Federal program. Thus, there are many similarities in language and structure between the two rulemakings. Two significant differences between this rulemaking and the part 70 rule are: (1) The part 70 rule describes required elements and procedures for establishing State title V permitting programs whereas this rulemaking is an actual permit program and (2) the part 70 rule requires comprehensive permits which address all applicable requirements at a plant site while this rulemaking would establish permits only for the hazardous air pollutant emissions from the defined early reductions source at a plant site. These differences led to the deletion of several sections of the part 70 rule and revision of others.

The remainder of this section describes the contents of the proposed rule and the rationale behind the proposed provisions. It is not the purpose of this preamble to reiterate the rationale for the part 70 rule for State permit programs but rather concentrate on areas where the part 70 rule was revised or new requirements added. The reader may refer to the proposal and promulgation notices for the part 70 rule for further information on its provisions and the rationale behind the provisions. (Part 70 was proposed on May 10, 1991, 56 FR 21712, and promulgated on July 21, 1992, 57 FR 32250.)

The two sections of the proposed rule not discussed under separate sections of the preamble are definitions (§ 71.22) and applicability (§ 71.23). Most of the

definitions for the proposed rule were taken directly from the promulgated part 70 rule, although several were not incorporated because they were not applicable to this rulemaking. A few definitions also were added from the promulgated Early Reductions Rule. The applicability section of the part 70 rule was deleted and replaced by two short paragraphs to narrow the scope of the rule to sources participating in the Early Reductions Program. Several other sections of the part 70 rule not pertinent to this rulemaking and not incorporated include: Program Submittals and Transition (§ 70.4), Permit Review by the EPA and Affected States (§ 70.8), Federal Oversight and Sanctions (§ 70.10), and Requirements for Enforcement Authority (§ 70.11). These sections apply specifically to State program requirements or to the approval and oversight aspects of State title V permit programs. Finally, a section on public participation and administrative appeal (§ 71.27) was added in order to establish: Specific procedures for notice and comment on draft permits and elements of the administrative record on permit decisions; procedures for appeal of final permit decisions; and prerequisites for judicial review.

A. Program Overview

This section of the rule (§ 71.21) describes the purpose, which is to establish an interim mechanism for issuing specialty, Federal title V permits for sources participating in the Early Reductions Program, and more importantly details how this specialty permits program interfaces with the States and their responsibilities under title V.

Early reductions specialty permits issued under this rulemaking will have a fixed term of five years, the maximum allowed under title V of the Act. However, prior to expiration of these permits, States probably will obtain approval of their comprehensive title V programs and will be in position to start issuing comprehensive title V permits. As this occurs, the EPA eventually will stop issuing specialty title V permits for early reductions sources and defer to the approved State title V programs. Several questions arise related to this transition: at exactly what point will the EPA stop issuing the specialty permits, would a State with an approved title V program be able to issue specialty early reductions permits in cases where the permit application was being processed by the EPA at the time of title V program approval, and how will existing specialty permits be treated when comprehensive title V permits are established for the entire plant site?

In resolving the first two questions, a primary concern was to ensure that permit issuance (and associated granting of a compliance extension) would not be substantially delayed as a result of the transition to State responsibility for permitting. Owners or operators must know in a timely fashion whether their sources will be granted a compliance extension. If a reduction demonstration is denied for some reason, the source will have to meet the section 112(d) emission standard on schedule. In such cases, the later a source receives word of an early reduction demonstration disapproval, the less time the source has to prepare to meet the 112(d) standard. Under the proposed rule, the Administrator will issue a specialty permit to an early reductions source within 12 months of receiving a complete specialty permit application. If a complete application has been received and is being processed by the EPA at the time a State obtains approval of a part 70 program, simply turning over the application to the State and letting the 12 month process begin all over again would produce substantial delay in permit issuance. The delay would be exacerbated if the source owner or operator had to rework the specialty permit application and resubmit it as a comprehensive title V application (under the part 70 rule owners or operators normally would be allowed up to one year to prepare and submit a comprehensive application).

To avoid this scenario, the proposed rule stipulates that the EPA may continue to process and issue an early reductions specialty permit in cases where: The permit application is filed with, but the permit has not yet been issued by, the EPA prior to the involved State obtaining approval of a part 70 program; or the specialty permit application deadline for the early reductions source (according to § 71.24(b) of the proposed rule) occurs before the comprehensive permit application deadline set in the State title V program. EPA solicits comment on whether it is necessary or appropriate for it to retain discretion to process and issue a specialty permit in the latter instance.

Note that the rule does not stipulate that the Administrator definitely will continue to issue specialty permits in the two cases above, but may do so. The key to whether EPA will issue the specialty permit or defer to the State for permit issuance is the degree of delay that would occur in granting the compliance extension through the State program. If the permit could be issued by the State within a few months of the time EPA would have issued the permit,

it is likely that EPA would not have to issue a specialty permit and would defer to the State.

The third question examines what happens to an existing early reductions specialty permit once the involved State has obtained approval of a part 70 program, and the answer is derived from an understanding of the character of such permits. It is the EPA's intent within this rulemaking to issue permits granting qualifying sources six-year compliance extensions from otherwise applicable section 112(d) standards and containing an alternative emission limitation to be met by the source until the extension expires. These permits are to be issued as specialty title V permits, meaning that their content will be consistent with the requirements of title V of the Act and consistent with part 70 rules establishing requirements for State title V programs for issuing comprehensive permits. However, a specialty permit will encompass only the early reductions source (which can be a designated subset of all HAP emitting equipment at the plant site) and only the HAP emissions from it. All other Act applicable requirements for emitting units from the plant site, including those for non-HAP emissions from the early reductions source, will be covered by the comprehensive title V permit issued for the plant site at a later time. Thus an owner or operator of a plant issued a permit under this subpart will have satisfied title V requisites for the early reductions source and for one applicable Act requirement, i.e., the otherwise applicable standards promulgated under section 112(d) of the Act. An existing early reductions specialty permit will be incorporated, without reopening, as part of the comprehensive permit issued for a facility, unless reopening is necessary for some other reason according to § 71.26(e). In issuing a comprehensive permit, a State may, however, extend the term of an existing early reductions permit so that it coincides with the expiration of the remainder of the comprehensive permit or the six-year compliance extension, as applicable.

The EPA invites comment on its proposed position regarding the relationship between incorporation of the specialty permit into the comprehensive part 70 permit and reopening of the specialty permit. Specifically, EPA requests comments on whether the entire specialty permit (as opposed to merely the early reductions determination) should be incorporated without reopening, or whether instead the State should have the option of excluding certain elements of the specialty permit such as the permit

shield, the emergency upset provision, or provisions for operational flexibility from the comprehensive part 70 permit.

The EPA is proposing to allow for the delegation of this early reductions specialty permit program to a State prior to the State obtaining full approval of a title V permitting program. Functions delegated would include the evaluation and approval or disapproval of the emission reduction demonstration which would qualify the source for a compliance extension (unless the State already had been delegated this function under an earlier delegation for the Early Reductions Program) and the issuance of a specialty title V permit granting the extension and establishing an alternative emission limitation for the source. However, after the specialty permit program is delegated to the State, appeals of final permit decisions would still be taken to the Environmental Appeals Board, pursuant to the administrative appeal provisions of § 71.27. The EPA plans to issue guidance, similar to that issued for the early reductions rule, which will further clarify the conditions under which EPA will delegate this specialty permit program to States. The EPA plans to evaluate State resources and capacity for successful implementation of the specialty permit program prior to granting a delegation. This will likely include, at a minimum, examination of the State's legal authority, resources, ability to assure compliance consistent with relevant schedules, and whether the State, in implementing the specialty permits rule, will otherwise satisfy its objectives and the objectives of the early reductions rule.

Enforcement of issued specialty permits would be delegated only if the State demonstrates that it is has enforcement authority substantially equivalent to that described in the part 70 rule (§ 70.11), including: the ability to restrain any person from engaging in an activity which is in violation of a permit and which poses an imminent and substantial danger to public health or welfare, or the environment; the ability to assess or sue to recover in court civil penalties and to seek criminal remedies; and a burden of proof under State law for establishing violations that is no greater than the burden of proof required under the Act. The requirement that a State merely have authority "substantially equivalent" to that in § 70.11 would not allow the exclusion of any elements of that section. Rather, it is intended to allow delegation to a State which takes a different approach to a particular element that in EPA's judgment attains the same enforcement results. Comment

is solicited on this delegation requirement, and in particular whether EPA should require stricter consistency with § 70.11, or whether instead it should allow States to depart more freely from those requirements.

The EPA does not intend that Federal title V permit programs be delegable to the States generally. Title V addresses the transfer of authority to States through specific program approval procedures, which is the primary mechanism for such transfer. The EPA generally contemplates promulgation of a Federal operating permits program only where the State fails to obtain or retain approval. However, EPA believes that delegation of this program is warranted in light of the special circumstances surrounding this rule. As explained above, this specialty permits program is not being established in response to the failure of any State to comply with title V. Rather it is an interim measure designed to fill a gap in the statute where there otherwise would be no permit issuance mechanism to implement the Early Reductions Program.

Although it is the intent of title V that it be implemented by the States wherever possible, it appears unrealistic to expect States to gain approval of a title V program, even one limited in scope to the early reductions program, in time to implement this specialty permit program from its inception. If States are to issue permits to early reductions sources prior to approval of a comprehensive title V program, EPA must be able to delegate this part 71 program directly to the States. The EPA believes this outcome is preferable, provided the State program is adequate, because allowing the State to issue the initial specialty permit will greatly facilitate the transition to a State-implemented title V program.

Similar to the situation above regarding specialty permit issuance after a State obtains approval of a comprehensive title V program, the Administrator may continue to process and issue a specialty permit in cases where the permit application is filed prior to the State obtaining delegation to implement this subpart. Again, whether EPA or the State issues the specialty permit depends on the amount of delay induced by transfer to the State. If the delay would not be significant, the application could be transferred to the delegatee.

B. Permit Applications

Procedures for filing permit applications under this subpart and the information required for complete permit applications are covered in

§ 71.24 of the rule. The section is patterned after the identically named section in the part 70 permit rule, although much of the original part 70 section has been revised or deleted to reflect the purposes of the early reductions specialty permit program.

To apply for an alternative emission limitation and a compliance extension for an early reductions source, an owner or operator must file a specialty permit application with the EPA Administrator. The Administrator will delegate the review and final disposition of permit applications under this subpart to the EPA Regional Offices and, therefore, applications actually should be sent to the appropriate EPA Region.

Applications, in general, must be filed no later than 120 days after the date of proposal of an applicable standard issued pursuant to section 112(d) of the Act or 120 days after promulgation of this subpart, whichever is later.

However, sources that have made enforceable commitments must submit applications by April 30, 1994. These deadlines will help assure that permits for early reductions sources will be issued in a timely manner.

Generally, a specialty permit application must contain all required information upon initial submittal in order to be considered a "complete" application. However, one exception is the documentation of actual post-reduction emissions, which cannot be completed until after the post-reduction year. (The post-reduction year is the year following the deadline for making early reductions, or in other words the year after the proposal date of an applicable section 112(d) standard or, for sources that have made enforceable commitments, calendar year 1994.) Therefore, the documentation of actual post-reduction emissions will not be part of the initial permit application but will be filed later as a supplement to the application. The supplement must be filed after the post-reduction year but no later than 13 months after the applicable deadline for making early reductions. For sources that have made enforceable commitments, the supplement must be filed after December 31, 1994 but no later than January 31, 1995.

Although the overall demonstration of actual post-reduction emissions will not be filed until after the end of the post-reduction year, source test results that will be used in the overall demonstration must be sent with the permit application. This requirement assures that source tests are conducted early in the post-reduction year (or sooner). For example, if an owner or operator plans to source test an emitting unit in the early reductions source to

help substantiate post-reduction emissions for the unit, the testing must be completed in time to submit results from the test with the permit application. These test results later would be combined with some type of emission monitoring or relevant parameter monitoring information to demonstrate actual emissions for the emitting unit for the post-reduction year. The EPA will begin evaluating permit applications when they are received, and a "completeness" determination will be made. The EPA 12-month timetable for permit issuance begins upon receipt of a complete application. However, no specialty permit will be issued until the post-reduction emission demonstration has been submitted and approved.

The Administrator will determine whether a permit application under this subpart is complete within 45 days of receipt. If no completeness determination is made within 45 days, the application will be deemed complete. The 45-day completeness determination period is somewhat less than that established in the part 70 rule (60 days) because specialty applications will be shorter than comprehensive permit applications and will be reviewed on a priority basis by EPA. During the processing of a complete application the Administrator may request the applicant to send additional information, if it is needed to evaluate or take final action on the permit. An applicant also has the responsibility to amend a permit application upon becoming aware that relevant facts were initially omitted, incorrect information was submitted, or new requirements became applicable after the permit application was filed. The source must submit this information in a timely manner or its application will no longer be considered complete.

For a permit application to be complete, the requirements of paragraphs § 71.24(c) and (e) must be met. These requirements are similar to those in the part 70 rule for State title V programs, but have been revised somewhat to apply to early reductions sources. The primary components of the application are: identifying information for the facility; a description of the early reductions source; substantiated base year emissions for the source; information on emission reduction measures employed to achieve the early reductions and results from any short-term emission tests completed after employment of such measures; the alternative emission limitation proposed for the source; and monitoring, recordkeeping, certification and reporting requirements proposed for the

source. If an enforceable commitment has been filed and approved, it can be used to supply the facility information, source description, and base year emissions required for the permit application. As mentioned above, the complete post-reduction emissions demonstration, which documents actual annual post-reduction HAP emissions and shows achievement of qualifying early reductions, is submitted later as a supplement to the initial permit application.

Detailed requirements for the description of the early reductions source, the associated base year and post-reduction hazardous air pollutant emissions, emission reduction measures employed, and other information necessary to demonstrate that the source has achieved qualifying early reductions will not be discussed in this preamble but are contained in the Early Reductions Rule § 63.74 and are incorporated into this rulemaking by reference. Thus, the permit application must contain sufficient information to satisfy § 63.74 of the Early Reductions Rule.

The source owner or operator also must propose in the permit application an alternative emission limitation to be met throughout the compliance extension period [§ 71.24(e)(3)]. This number would constitute an annual cap on HAP emissions from the early reductions source and would reflect at least a 90 percent reduction from the established base year emissions (95 percent reduction for sources emitting particulate HAP). Aggregate HAP emissions from all emitting equipment or operations in the early reductions source must remain at or below the alternative emission limitation on an annual basis. If the early reductions source emits any of the hazardous air pollutants designated "high-risk" pollutants by the Early Reductions Rule, then a second alternative emission limitation would be required. This second limitation would be set at a level at least 90 (95) percent below base year emissions adjusted by the weighting factors of any high-risk pollutants emitted.

Section 71.24(e)(4) also requires the permit application to include "additional emission limitations, limitations on operation, work practice standards, and any other emission limiting requirements for the early reductions source necessary to assure compliance with the alternative emission limitation(s)." It may not be necessary to delineate additional individual emission limits for emitting units in the early reductions source provided that the monitoring, reporting,

and recordkeeping terms of the permit are sufficient to assure enforceability of the alternative emission limitation. The reader is referred to the following section on permit content for more detail on additional limits in early reductions permits.

The permit application also must contain information necessary to define alternative operating scenarios for the early reductions source and identify associated permit terms and conditions needed to assure that the source will meet the alternative emission limitation under the alternative scenarios. Many emitting processes or operations vary during the course of a year due to seasonal factors, production rate changes, raw material switching, product changes, or other variations considered normal for a particular business. Such variations would become allowable under an early reductions permit if they are defined in the permit and associated limiting terms or conditions in the permit assure that the alternative emission limitation will not be exceeded.

The last requirement for a permit application, § 71.24(e)(6), includes statements related to compliance. Specifically, each application must contain: (a) A statement of the methods proposed to demonstrate continuing compliance with the alternative emission limitation and other permit conditions, including a description of monitoring devices or activities for the emissions units in the source, test methods, and recordkeeping and reporting; (b) a schedule of submissions of compliance certifications during the permit term (at least annually); and (c) a statement indicating the source's compliance status with applicable enhanced monitoring requirements (if any) and compliance certification requirements of the Act.

As noted in the previous paragraph, the permit application must contain the owner or operator's proposed compliance provisions (monitoring, recordkeeping, reporting, and compliance certifications) necessary to assure that the early reductions source maintains compliance with the alternative emission limitation. The EPA cannot prescribe the types of monitoring required within this rulemaking because the Early Reductions Program is open to all types of source categories and emission reduction measures and selection of appropriate monitoring methods directly depends on emission characteristics and reduction measures used. Nonetheless, it is the owner or operator's responsibility to propose appropriate monitoring for the early

reductions source. Guidance for generating proposed monitoring requirements in an early reductions permit application will be available through the following means.

Major sources of HAP, those that emit 10 tons per year or more of an individual HAP or 25 tons per year or more of any combination of HAP, will be subject to enhanced monitoring requirements under section 114(a)(3) of the Act, and other sources may be subject to such enhanced monitoring requirements. The EPA is in the process of establishing implementing regulations for the enhanced monitoring provision of the Act. If the enhanced monitoring regulations are not promulgated at the time of filing a permit application under this rulemaking, any proposed enhanced monitoring regulations should be used as a guide. If such promulgation occurs after the time of permit application filing but prior to permit issuance, the promulgated regulations will be taken into account in the final permit. Once a permit is issued, EPA does not anticipate requiring a revision of the permit for monitoring until renewal. (Renewal of specialty permit terms and conditions for an early reductions source will be accomplished pursuant to an approved comprehensive title V permit program, since the specialty permit itself will not be renewed.)

Additional help for establishing monitoring requirements for specific types of emissions may be available from existing emission standards for the same type or similar type of source, or from standards based on use of the same or similar emission reduction measures. Normally, specific monitoring requirements are established as part of an emission standard for a source category, e.g., a new source performance standard issued under section 111 of the Act or existing hazardous air pollutant standards issued under section 112. Such standards could provide useful information to guide the owner or operator in proposing monitoring methods for the early reductions source.

In general, for early reductions sources containing multiple individual emission points, which in aggregate are subject to the alternative emission limitation, monitoring devices/activities should be specified for each point to substantiate ongoing performance of the source. This does not mean that every emission point will be required to have a monitoring device that directly measures emissions. Other methods may suffice to indicate with accuracy that emissions are within allowable levels, such as monitoring process or equipment parameters or material flows,

or performing equipment inspections. Factors influencing acceptability of a monitoring method include the accuracy and reliability of the method, the frequency of monitoring or testing, and the amount of emissions from the unit to be monitored. The larger emission units in the source likely will be subject to more rigorous monitoring requirements. During the post-reduction year, owners or operators should begin implementing monitoring they plan to propose in their permit applications to help substantiate post-reduction emissions.

To complement compliance monitoring, the source owner or operator must include recordkeeping and reporting requirements in the permit application. Records would be kept of compliance monitoring results and would be reported to the EPA periodically. Such reports must be submitted at least every six months, more frequently if necessary for adequate enforcement of the alternative emission limitation. Additional detail on recordkeeping and reporting is in the following section of this preamble on permit content.

Finally, the permit application must provide a statement indicating the source's compliance status with respect to the enhanced monitoring requirements of the Act, where applicable. These requirements will be detailed in regulations EPA will issue in the near future. If the regulations have not been promulgated at the time of filing the permit application, the applicant should use the proposed version of the regulations in discussing the source's enhanced monitoring compliance status.

Any permit application, report, or compliance certification submitted under this subpart must contain a certification by a responsible official indicating the submittal is true, accurate, and complete based on information available to the official and conclusions reached after reasonable inquiry into the contents of the submittal.

C. Permit Content

The permit content section of the proposed rule (§ 71.25) details the information and requirements that must be in permits issued under this subpart. It mirrors a similar section of the part 70 rule for State permit programs and contains several parallels to the previous section on permit applications. Overall, the section contains much of the same language from the part 70 rule. For the most part, only relatively minor revisions have been made to the part 70 counterpart due to the narrow focus of

this rulemaking on hazardous air pollutants from early reduction sources. For example, because these permits do not implement applicable requirements of the Act but rather create alternative emission limits, the proposed rule contains no requirement that these permits address all applicable requirements.

The most significant changes are that the part 70 paragraphs on general permits and temporary sources have been deleted. General permits are designed to cover numerous similar sources with essentially the same permit conditions and limitations, thus reducing the time and expense of issuing separate permits for the sources. Early reductions sources will be different from each other and will require different permit terms and conditions. No general permits are contemplated for early reductions sources. Temporary sources are nonpermanent operations that will operate at multiple locations during the permit term. Early reductions sources will be permanent operations at a fixed site. Therefore, any provisions in the State permit program rule for temporary sources would not apply to this rulemaking.

In general, a permit will contain an alternative emission limitation for the early reductions source; additional emission limitations, operational limits, or work practice standards for the early reductions source, as necessary to assure practical enforceability of the alternative emission limitation; monitoring, recordkeeping, compliance certification, and reporting requirements; alternate operating scenarios provisions, if requested by the applicant; provisions for trading emissions increases and decreases, if feasible and requested by the applicant; compliance requirements (including compliance certifications); a provision for emergencies which may arise within the early reductions source; and a "permit shield" provision. The development of the permit content provisions will not be discussed in detail in this preamble since the requirements are very similar to the part 70 rule for State title V permit programs. The reader is referred to the Federal Register notices for that rulemaking for such information. The following paragraphs primarily will summarize the most important provisions and explain any significant departures from the part 70 rule.

Each early reductions source will receive an alternative emission limitation for hazardous air pollutants, written in terms of an annual cap. If the source emits any of the 47 high-risk

pollutants listed in the final early reductions rule, an additional alternative emission limitation will have to be issued which takes into account the weighting factors assigned to the high-risk pollutants.

As noted in the previous section of this preamble on permit applications, § 71.25(a)(2) also requires the permit to include "additional emission limitations, limitations on operation, work practice standards, and any other emission limiting requirements for the early reductions source necessary to assure compliance with the alternative emission limitation(s)." This requirement is not meant to mandate additional limitations but rather to provide for their use, as necessary, to ensure practical enforceability of early reductions permits. It is important that EPA have the ability any time during the year to track a source's progress toward meeting the alternative emission limitation, discern excess emissions, and require corrective action. Annual emissions limits alone are not easily enforced because it is difficult to discern and prove at any given time that the source will exceed the annual emissions cap. Monitoring, reporting, and recordkeeping terms written into a specialty permit would enhance the enforceability of the annual cap, particularly where they include provisions incorporating a rolling annual emission determination, perhaps on a quarterly or monthly basis. With this mechanism there would be more frequent determination and reporting of emissions for the previous 12 month period, thereby giving a better, more timely indication of a source's performance. However, if this method still would not create sufficient enforceability for a particular source, additional short-term emission limits might be appropriate.

No prejudgments are made in this rulemaking as to whether additional limitations on the source would be necessary to ensure enforceability of the alternative emission limitation under the Early Reductions Program. The likely variety in numbers and types of emitting units comprising early reductions sources precludes this. These decisions will be made during permit issuance and will be based on several factors including: The ability of EPA to be able to determine compliance more frequently than annually, the number of distinct emitting units in the source, and the emission characteristics of the emitting units.

The additional requirements may be work practices or limits on operation, as authorized by section 112(h) of the Act. Examples include a permit requirement

to properly utilize floating roofs with adequate seals to prevent emissions from storage tanks or a requirement to operate an emissions control device, such as an incinerator, within a specified temperature range. Short-term emission limits on certain emitting units also could be specified, such as monthly or daily emission limits on the larger emissions in the early reductions source.

Each permit will contain monitoring requirements necessary to assure compliance with the alternative emission limitation and other limitations on the early reductions source. As described in the section above on-permit applications, monitoring methods will be proposed by the applicant and will be confirmed, or if necessary revised, as part of the permit evaluation and issuance process. The permit also will specify records to be kept at the facility and periodic reports to be submitted to EPA.

Many of the permit content section requirements related to monitoring, recordkeeping, reporting, and compliance certification contain detail that will guide the applicant in preparing a complete initial permit application. For example, records of monitoring information must include the date, place, and time of sampling or measurements; the date analyses were performed; the company that performed the analyses; the analytical techniques or methods used; the results of such analyses; and the operating conditions existing at the time of sampling or measurement.

At a minimum, the early reductions source owner or operator must submit reports of all monitoring at least every six months. Shorter reporting intervals could be specified within the permit if warranted, perhaps for some of the most significant emission points in the early reductions source or where emissions are expected to vary substantially with time or seasonally.

The owner or operator also will be obligated to report deviations from permit requirements within ten days of occurrence, including those due to upset conditions. The counterpart requirement in the part 70 rule for State programs requires "prompt" reporting of such deviations but allows the State to set specific deadlines. For the purposes of this rulemaking, the ten-day deadline is considered to constitute "prompt" reporting. Ten days was judged to provide reasonably quick notice of deviations to the permitting authority, yet give the owner or operator sufficient time to investigate the event and prepare a brief report. To minimize the number of reportable "deviations,"

the permit should include, as comprehensively as possible, terms and conditions covering routine variations in operations and maintenance, including startups and shutdowns. (Of course the permit terms and conditions for routine variations still must assure compliance with the alternative emission limitation.) The EPA seeks comment on the 10-day reporting deadline for permit deviations.

The permit will contain terms and conditions for alternate operating scenarios at the early reductions source, if requested by the applicant. The purpose of this provision, which is similar to the part 70 rule, is to accommodate different operating modes without requiring a permit modification. The permit will be written to ensure that the alternative emission limitation is met under each operating scenario and will require the owner or operator to record in a log the scenario under which it is operating.

As noted in the preamble to the final operating permit regulations, EPA believes that the operational flexibility provisions of section 502(b)(10) of the Act are a mandatory element of any title V permit program. [See 57 FR 32250, 32266 (July 21, 1992)]. Accordingly, the part 70 regulations provided for three alternatives, two of which were mandatory for any State operating permit program, for implementing this section of the Act. The two mandatory elements are at least potentially applicable to this rule. The optional element did not pertain to section 112 requirements, and therefore can have no relevance here. Part 70 requires, first, that a State program allow certain narrowly defined changes at a permitted facility that contravene permit terms ("section 502(b)(10) changes"). Second, State programs must provide for emissions trading within a permitted facility for purposes of complying with a federally enforceable emissions cap established in the permit independent of or more strict than an applicable requirement.

The EPA has considered the range of application for operational flexibility in this specialty permit program, and has decided, for the reasons discussed below, that only the second of the alternatives described above is appropriate for this program. The EPA solicits comment on whether the emissions trading provision retained in this rule is appropriate or necessary, and whether it should be augmented with a provision for "section 502(b)(10) changes."

Proposed § 71.25(a)(10) provides for the permit to allow trading hazardous air pollutant emission increases and

decreases between emissions units covered by the alternative emission limitation, where the permittee requests it and the permittee proposes adequate procedures to quantify the increases and decreases and ensure that the alternative emission limitation will not be violated. Additionally, the changes precipitating the emissions increases and decreases cannot constitute a modification under title I of the Act and the permittee must give a seven-day advance notice of the change to the permitting authority. Such notice must describe the proposed change, when it will occur, and how the change will comply with the alternative emission limitation and other terms and conditions of the permit.

The incorporation of this operational flexibility provision into the proposed specialty permits rule is consistent with the part 70 provisions for operational flexibility, since the alternative emission limitation is essentially a federally enforceable emissions cap established independent of otherwise applicable requirements. It also is consistent with the purposes of the Early Reductions Program, because it allows the source considerable flexibility in how it will meet the reduction level. At the same time, it assures that the specialty part 71 permit will be enforceable, since the permitting authority may not accept a proposal for emissions trading that does not include replicable procedures adequate to ensure that individual trades will be quantifiable and enforceable.

As noted above, the proposed rule does not allow for "section 502(b)(10) changes." These are defined in the part 70 regulation as changes that contravene an express permit term, where such changes would not contravene federally enforceable permit terms that are applicable requirements of the Act or are monitoring (including test methods), reporting, recordkeeping, or compliance certification requirements. As conveyed in the preamble to the part 70 regulations, this provision is designed to allow changes that contravene permit terms not needed to enforce emission limitations or a federally enforceable cap assumed to avoid an otherwise applicable requirement.

The EPA does not believe there will be any such superfluous terms in specialty permits. Because EPA will be the permitting authority for these specialty permits (or will have an oversight function where a State has been delegated the specialty permits program), it will be able to ensure that nonessential requirements do not find their way into the permit. This task should be greatly facilitated by the fact that these permits will address only the

alternative emission limitation. There will be no need, for example, to examine State requirements associated with delegated Federal standards or State Implementation Plans and determine whether certain terms are unnecessary for ensuring compliance with these requirements.

Given the narrow programmatic focus of these permits, the source-specific nature of the limitations to be incorporated, and the careful scrutiny that will be given to each permit by EPA prior to its issuance, the EPA believes it is highly unlikely that the flexibility intended by § 70.4(b)(12)(i) of the part 70 regulations is needed in this program. Moreover, in light of this finding, EPA believes that providing sources with the authority to contravene any specialty permit terms would be inconsistent with section 502(b)(10) of the Act. For this reason, EPA is proposing not to allow the flexibility to make "section 502(b)(10) changes" in this specialty permits program.

Other provisions on permit content in § 71.25 of the proposed rule which are very similar to the part 70 rule include: a severability clause to ensure continued validity of the various permit requirements in the event of a challenge to any portion of a specialty permit, certain provisions related to permit enforcement, compliance requirements, the permit shield, and the emergency provision. These provisions will not be discussed in detail, except for a summary of compliance certification requirements and a brief discussion of the permit shield as applied to early reductions sources.

As required by title V of the Act, permits must contain requirements that the source certify compliance at least annually. Early reductions sources will have to show at the end of every year that the alternative emission limitation has been met as well as the other terms and conditions in the specialty permit. The permit could require certification of terms and conditions more frequently than annually, if necessary for proper enforcement of the permit. A compliance certification must contain: an identification of each term or condition of the permit that is the basis of the certification; a discussion of the compliance status and whether compliance was continuous or intermittent during the year (or other reporting period); the methods used to determine compliance over the reporting period; and other facts required by the permitting authority, if any, to determine compliance status.

Section 71.25(d) of the proposed rule allows for the establishment of a permit shield. Under this provision, EPA will

provide in any permit that compliance with the terms and conditions of the permit will be deemed compliance with the requirements of the early reductions regulations (part 63, subpart D). Like the permit shield provided for in part 70, this shield essentially protects the source against a claim in an enforcement action that the permit does not adequately implement the underlying requirement. Also similar to part 70, the permit shield provided for in this program does not shield the source against any changes to the regulations that may occur following permit issuance.

Unlike the part 70 permit shield, the shield proposed here has a very limited range of operation. It does not shield the source relative to any applicable requirements other than the Early Reductions Rule. Moreover, it does not explicitly act as a shield relative to the section 112(d) standards that would apply in the absence of the alternative emission limitations. The EPA believes that no such shield is necessary, since it is inherent in the operation of the Early Reductions provision of the Act (section 112(i)(5)) that these standards will not be enforceable against the source while the alternative emission limitation is in effect.

The permit shield provision in the proposed rule differs in another respect from that in part 70. Under part 70, a State retains discretion not to grant a shield in any particular circumstance. The EPA is proposing to grant a shield for each specialty permit it issues.

The EPA believes that, in spite of the narrow range of requirements addressed in these specialty permits, the permit shield may be useful in this permit program in that it may provide the source with additional assurance that the terms of its permit faithfully implement the requirements of the Early Reductions Rule. The EPA solicits comment on this use of the shield, and in particular whether such assurance against differing interpretations of the Early Reductions Rule in an enforcement action is necessary or appropriate.

A final point of discussion on the permit content section of the rule relates to the payment of fees by the early reductions source. Title V of the Act requires State permit programs to contain provisions for the collection of fees to cover the cost of issuing comprehensive permits. However, under circumstances in which the Administrator issues a comprehensive permit under title V, the Administrator's collection of fees is discretionary. For the issuance of specialty permits under this rulemaking, the EPA has adopted

the stance that fees may be required by the Administrator (§ 71.25(a)(8)).

Although EPA is reserving the right to collect fees for issuing specialty permits, at this time the EPA does not anticipate collecting such fees due to the effort involved in setting up and administering a fees collection system and because EPA expects to issue relatively few permits for the brief duration of this specialty permits program. Under a delegation, States would be expected to collect fees for issuing specialty permits sufficient to cover the cost of administering the delegated program. The EPA solicits comment specific to this policy on collection of fees for federally issued permits under this rule. Taking into consideration such comments, EPA intends to make a definite statement in the promulgated version of the rule on whether fees will be collected for federally issued specialty permits.

D. Permit Issuance, Reopenings, and Revisions

Section 71.26 of the proposed rule pertaining to the mechanics of issuing permits is similar in structure to its counterpart in the part 70 rule (§ 70.7). Edits have been made to the part 70 language to make the section appropriate for the Early Reductions Program. Additionally, a couple of significant changes have been made and are discussed below.

A specialty permit or specialty permit modification will be issued by the Administrator only if: A complete application for the permit or modification has been submitted, public participation requirements of § 71.27 of the proposed rule have been met, the terms and conditions of the permit meet all the requirements of § 71.25 for permit content, and the permit provides for compliance with an alternative emission limitation reflecting the emissions reduction which qualified the early reductions source for a six-year compliance extension under the Early Reductions Rule. Within 45 days of receiving an application, the Administrator will notify the applicant that the application is complete or that it is incomplete and request additional information. If no notification is sent within 45 days, the application is deemed complete. Permits will be issued within 12 months of receipt of a complete application. (Although, as mentioned earlier in this preamble, no permit will be issued until this rule is promulgated and the demonstration of post-reduction emissions has been submitted and approved.)

For all permit applications and permit modifications, the Administrator will

provide for public comment, including comment by affected States, and for a public hearing if requested. Notice of the proposed action will be provided according to the requirements of § 71.27. The draft permit and supporting materials will be available for public inspection during the comment period, which shall be at least 30 days. Within 30 days of issuance of final permit decisions, appeals may be filed with the Environmental Appeals Board, and such appeals shall be prerequisites for judicial review of final permit decisions. If the Administrator approves a State program for the implementation of this subpart, the Administrator will retain the right to object to issuance of a permit or permit modification that does not meet the requirements of this subpart, according to the procedures described in § 71.26(f).

Unlike comprehensive title V permits, specialty permits that would be issued under this rulemaking will not be renewed. The issuance of specialty permits to early reductions sources is an interim means of meeting the requirements of section 112(i)(5) of the Act until a comprehensive title V permit issuance mechanism is available, and the five-year term of a specialty permit will be sufficient to bridge this interval. Therefore, renewal is not necessary. A specialty permit eventually will be incorporated into the comprehensive permit for the facility containing the early reductions source. If for some reason there is a delay in issuing the comprehensive permit to the facility despite the timely filing of a complete comprehensive application, then any existing specialty permit reaching the end of its term shall not expire but will remain in effect until the comprehensive permit is issued. However, the fact that a specialty permit exists for an early reductions source in no way shields an owner or operator from an obligation to file a timely application for a comprehensive title V permit for the entire facility.

The part 70 rule section on permit issuance (§ 70.7) contains procedures for three different types of modifications to permits: Administrative amendments, minor permit modifications, and significant modifications. For specialty permits under this rulemaking, only two procedures are being proposed, one for administrative amendments and one for all other types of modifications. Administrative amendments are narrowly defined, minor revisions to permits and include only the following types of actions: correction of typographical errors; changes to name, address, or phone number of a person identified in the permit; incorporation

of more frequent monitoring or reporting by the permittee; and changes in ownership that do not involve other permit changes. Administrative amendments may be implemented by the owner or operator upon submittal of the request to the Administrator. The Administrator will take action on such requests within 60 days and need not provide notice to the public or affected States.

All other permit revisions that cannot be classified as administrative amendments must be processed through the modification procedures (§ 71.26(d)). Permit modifications are processed in the same way as initial permit applications. The modification application need only address the proposed changes to terms and conditions in the existing permit but otherwise must meet the requirements for permit applications (§ 71.24) and will be offered for public comment as in § 71.27. The Administrator will take final action on permit modifications within 12 months of receipt of a complete application for the modification.

Specialty permits may be reopened and revised if the Administrator determines that the permit contains a material mistake, that inaccurate statements were made in establishing the alternative emission limitation or other terms or conditions of the permit, or that the permit must be revised to assure compliance with the alternative emission limitation. Procedures for reopening and revising a permit are the same as for initial permit issuance and affect only those parts of the permit which caused the reopening. The Administrator will provide the owner or operator at least 30 days advance notice before reopening a permit.

As previously indicated and unlike the part 70 rule for comprehensive permits, no provision has been made in this rulemaking for minor modifications to specialty permits. The minor modifications provisions of part 70 allow a permitted source to make certain changes immediately upon application to the permitting authority, thereby avoiding the delay associated with review and issuance procedures for significant modifications. Although this rulemaking currently does not contain such a provision, the EPA is considering inclusion of minor modification procedures in the final rule that either would be similar to those in part 70 or would provide for a 30 or 60 day expedited review of minor modifications prior to the source making the change, as opposed to the significant modification process which may take up to twelve months.

The part 70 rule (§ 70.7(e)(2)(i)(A)) provides criteria for determining whether proposed changes at a source may be processed as minor modifications. Most relevant here are subsection (i)(A)(2), which prohibits use of the minor modification track for significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit, and subsection (i)(A)(4), which provides that a minor modification cannot "seek to establish or change a permit or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject," including, specifically, "an alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act."

The EPA recognizes that situations may arise in which an early reductions source owner or operator wishes to make insignificant changes to compliance terms in the permit, such as those involving monitoring, reporting, or recordkeeping. On the one hand, subsection (i)(A)(4) would prohibit use of the minor modification track to revise an alternative emission limitation, and presumably any compliance terms in the permit necessary for enforcement of that limitation. On the other hand, alternative emission limitations, similar to a promulgated standard augmented by compliance terms existing only in the permit, may be susceptible to changes to those compliance terms that are truly insignificant. Therefore, EPA does not believe that subsections (i)(A)(2) and (i)(A)(4)(B) are mutually exclusive, but rather that these two subsections, read together, may yield an interpretation which would allow insignificant changes to monitoring, recordkeeping, or reporting requirements associated with an early reductions alternative limitation.

Despite the viability of this interpretation from a textual standpoint, certain policy concerns have led EPA to exclude the minor modification track from the proposed rule. In particular, there is concern that allowing "insignificant" changes to a specialty permit's monitoring, reporting, or recordkeeping provisions to be treated as minor modifications could weaken enforcement of the overall alternative emission limitation. Similar to the alternative emission limitation, there will be no specific applicable requirements of the Act underlying the monitoring, reporting, and recordkeeping terms of a specialty permit (except perhaps for general

requirements for enhanced monitoring promulgated under section 114(a)(3) of the Act]. Such terms essentially will be negotiated and determined by the Administrator to be adequate for the purposes of the Early Reductions Program at the time of permit issuance. Therefore, if a supposedly insignificant monitoring change were to be made at an early reductions source, processed as a minor modification, and after review by the permitting authority found to be a significant change, the only recourse for the permitting authority would be to require the source to return to the original permit terms. There would be no possibility of enforcement of the underlying applicable requirement, since none exists, and no penalty to the source. Additionally, the monitoring change made may have resulted in inaccurate or unreliable information, compromising the ability of the permitting authority to determine later whether the source had met the alternative emission limitation for the year.

Moreover, the ability to effect insignificant changes to compliance provisions in the permit prior to governmental review will be practicable only if there is sufficient predictability concerning what changes reach the significance threshold. For requirements of general applicability, this predictability can be achieved through the establishment of guidelines addressing significance in the context of compliance regimes found in established requirements. However, inherent in the concept of an early reductions alternative emission limitation is the probability that it will contain compliance provisions tailored uniquely to the permitted source. The EPA believes that, for a source permitted in this manner, the forum for predicting what changes to compliance terms may be insignificant should be the permit itself. Any flexibility to make insignificant changes to monitoring, recordkeeping, or reporting provisions should therefore be either written into the permit at issuance, or approved by the Administrator in advance of the change through a significant modification process.

Finally, it is not altogether clear that early reductions sources will need the flexibility provided by a minor permit modification procedure. Each specialty permit will contain requirements specifically designed for the types of pollutants emitted and reduction measures employed at the subject early reductions source. Such requirements will be proposed by the owner or operator in the permit application and, although proposed requirements can be

modified during the permit issuance process, presumably will reflect the owner's or operator's preferences. This likely would limit the need to make changes during the permit term.

The EPA seeks comment on this issue specifically with regard to the need for minor modification procedures for specialty permits, the appropriateness of having such procedures, the enforceability of the alternative emission limitation if minor modification procedures were to be adopted, and whether an expedited review of proposed changes in advance of the change would be more appropriate for early reductions sources than allowing changes prior to governmental review as in the part 70 minor modification procedures.

E. Public Participation and Administrative Review

Section 71.27 of the proposed rule provides detailed procedural requirements for public participation in and administrative review of permitting decisions. While the Part 70 rule establishes minimum requirements for public participation in State administered programs, EPA believes that since the Early Reductions Program will be federally administered and not subject to further rulemaking before the program is in effect, specific procedures for public participation and administrative review should be established concurrently with the other requirements of this rule. This approach is consistent with other federally administered permitting programs, such as the Prevention of Significant Deterioration ("PSD"), National Pollutant Discharge Elimination System ("NPDES") and Resource Conservation and Recovery Act ("RCRA") programs.

EPA considered two alternative methods of establishing the public participation and administrative review procedural requirements. The first alternative would be to amend the existing procedures in 40 C.F.R. Part 124, which establishes specific decisionmaking procedures for RCRA, Underground Injection Control ("UIC") PSD and NPDES permits, so that they would be compatible with the Early Reductions Program. EPA would then incorporate those provisions by reference in the early reductions permit rule. The second alternative was to establish public participation and administrative appeal procedures as a separate section of this rule. This alternative has the advantage of allowing these procedures to focus specifically on the needs of the Early Reductions Program as well as appear in close proximity to the permit program

requirements in the Code of Federal Regulations.

The proposal follows the second alternative. These public participation and administrative appeals procedures are set out at § 71.27, and are based closely on the selected provisions part 124, subpart A. The EPA does not believe the choice of one format over the other will have a substantial impact on the implementation of this rule. The EPA will further consider these issues of regulatory structure as it develops the comprehensive part 71 program, and solicits comment on this question in this rulemaking as well.

Once a permit application is complete, including an application to modify an existing permit, EPA will tentatively decide whether to prepare a draft permit. Such draft permits will contain permit conditions specified in § 71.25, and be publicly noticed and made available for comment. Administrative modifications of permits will not be subject to draft permit or public notice requirements. All draft permits will be accompanied by a statement of basis that briefly describes the derivation of the conditions of the draft permit and the reasons for them.

Section 71.27(d) establishes public notice and comment procedures for early reductions permit actions, including application denials, draft permit preparation, scheduling of public hearings, reopening of the public comment period, and granting of appeals. Notice of draft permits (including permit modifications) will provide at least 30 days for public comment, and notices of hearings will issue at least 30 days before hearings are held. Notice will be provided by mail to interested persons, publication, or other reasonable means, and will include information on the permittee, the processing agent, contact persons, and general procedures on submitting comments and requesting to speak at hearings. In addition, notices of hearings will provide information on dates, times and places of hearings, as well as applicable rules and procedures. EPA may hold hearings either upon the basis of requests or on its own initiative.

Interested persons are required to raise all reasonably ascertainable issues during the public comment period, but EPA may reopen the public comment period on its own initiative or at the request of interested persons if doing so would expedite the decisionmaking process. Comments filed pursuant to such reopenings will be limited to the new questions that necessitated reopening. After the close of all public comment periods, EPA will issue a final permit decision that includes

information on procedures for appeal, accompanied by a response to comments filed by the public. EPA will individually notify affected States whose recommendations are not accepted for the permit. Final permit decisions will be based on the administrative record defined in § 71.27(k), including comments received, hearing transcripts, the response to comments, the final permit, the permit application, and the draft permit and its statement of basis.

Section 71.27(l) grants a right of appeal of final permit decisions and establishes procedures for such appeals. Within 30 days of a final permit decision, interested persons may petition the Environmental Appeals Board to review the final permit decision. Petitions for review must include a statement of the reasons supporting review and may address only issues raised during the public comment period, unless it was impracticable to raise the relevant objections during such period or the grounds for objection arose after the period closed. An example of a situation in which it is impracticable to raise an objection during the comment period would be when a significant change is made from a draft to final permit without providing an opportunity for public comment. Moreover, while persons who participated in the comment or hearing processes may petition the Board to review any condition of the final permit decision, persons who failed to file comments or participate in hearings may petition the Board only with respect to changes from the draft to final permit decision. When an early reductions permit is appealed, it will nevertheless remain fully effective and enforceable against the permitted source.

Finally, all permits may be modified, revoked and reissued, or terminated at the request of any interested person or upon EPA's initiative for reasons specified in §§ 71.25(a)(7) and 71.26(e). EPA tentative decisions to modify, revoke and reissue, or terminate permits will follow the same public notice and comment procedures as initial draft permits. Denials of requests may be appealed to the Environmental Appeals Board, and such appeals are prerequisites for judicial review.

EPA seeks comment on its method of establishing procedures for public participation and administrative review, and on the appropriateness of the specific procedures proposed. EPA particularly seeks comment on the issues of petitions to modify and terminate permits, the statement of basis accompanying draft permits, the

proposed public notice and comment requirements, and appeals of permits.

III. Summary of and Rationale for Proposed Amendment to Early Reductions Rule

The Early Reductions Rule requires an enforceable commitment to include a description of the participating source, documentation of actual HAP emissions from the source for the chosen base year, and a statement of commitment to achieve actual annual post-reduction emissions of a specified amount, where the amount is set by the requirement to achieve a 90 (95) percent reduction from the actual base year emissions. If a source had 100 tons per year of gaseous HAP emissions, then the source owner or operator would commit to achieving a 90 percent reduction or 10 tons of HAP emissions per year. No other explicit promises were required to be in an enforceable commitment.

According to the Early Reductions provisions of the Act, enforceable commitments made under the Early Reductions Program are to be enforceable to the same extent as a section 112(d) standard that would otherwise apply to the early reductions source. Therefore, EPA can initiate enforcement action against sources that fail to live up to their commitments. Owners or operators of participating sources would demonstrate achieving promised reductions by submitting post-reduction emission information for the year following the reduction deadline (calendar year 1994). Since this information would not be submitted to EPA until after the end of 1994 and since the source owner or operator was not required to make any other specific promises in the enforceable commitment, little opportunity exists for EPA to check on a participating source's compliance with an enforceable commitment until after the end of 1994.

Nonetheless, a source that has made an enforceable commitment is expected to have implemented before January 1, 1994 emission reduction measures sufficient to ensure that 1994 actual HAP emissions fall within the commitment level. A description of all such emission reduction measures employed is required to accompany the permit application to be submitted by participating sources by April 30, 1994. EPA is proposing to append the emission reduction measures information to the enforceable commitment to complement the participant's commitment to a specific numerical reduction target. In essence, adding this information to an enforceable commitment would present EPA the opportunity to inspect

participating facilities during 1994 to see that declared reduction measures were operational and functioning properly. In the event an inspection shows that a claimed reduction measure is not in operation or is not being operated or carried out properly and the cause is not attributed to a sudden, unavoidable malfunction of emission reduction equipment or processes, the source would be in violation of its enforceable commitment. A violation of this type could cause the source to be subject to a penalty or could cause the source's later demonstration of achieving qualifying reductions to be invalidated (resulting in EPA refusing to grant an early reductions compliance extension), unless the owner or operator can show to the satisfaction of EPA that the 90 (95) percent reduction target had been achieved despite the violation.

During 1994, an owner or operator of a participating source may discover that reduction measures listed in the initial permit application are not needed to achieve the reduction levels specified in the enforceable commitment or may need to replace failed emission reduction equipment. For such situations, a source making any change prior to the end of 1994 in the emission reduction measures described in the initial permit application must submit a notice describing the changes to EPA within 5 days of making the change. Such notice will constitute an amendment to the enforceable commitment.

IV. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed specialty permits rule and the proposed amendment to the Early Reductions Rule in accordance with section 307(d)(5) of the Act. Persons wishing to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the ADDRESSES section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket Section in Washington, D.C. (see ADDRESSES section of this preamble).

B. External Participation

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and other regulatory agencies. The Administrator welcomes comments on all aspects of the proposed regulation.

C. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and involved industries to readily identify and locate documents so that they can participate effectively in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated rule and EPA responses to significant comments, the content of the docket, except for interagency review materials, will serve as the record in case of judicial review [section 307(d)(7)(A)].

D. Paperwork Reduction Act

The information collection requirements in the proposed specialty permits rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1650.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, DC 20460; or by calling (202) 260-2740.

This collection of information is estimated to have a public reporting burden averaging 554 hours per respondent for one-time burden items and 43 hours per respondent annually for recurring burden items. This includes 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 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." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

The information collection requirements of the previously promulgated Early Reductions Rule (57 FR 61970) were submitted to and approved by the Office of Management and Budget. A copy of this ICR (OMB control number 2060-0222) may be obtained from Sandy Farmer at the address mentioned in the first paragraph of this section. Today's proposed change to the Early Reductions Rule would not affect information collection requirements of the rule. No new information is being solicited and the existing ICR does not require revision.

E. Executive Order 12291 Review

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The criteria set forth in section 1 of the Order for determining whether a regulation is a major rule are as follows: (1) Is likely to have an annual effect on the economy of \$100 million or more; (2) is likely to cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local governments; or (3) is likely to result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The EPA has concluded that the specialty permits rule would result in none of the economic effects set forth in section 1 of the order as grounds for the finding "major rule." The Early Reductions Program is a voluntary program, open to sources that seek a temporary alternative to meeting an otherwise applicable section 112(d) standard. Generally, sources will participate in the program if they feel participation would lower compliance costs compared to meeting the section 112(d) standard. It is not possible to predict with accuracy the magnitude of compliance cost reduction through participation in the Early Reductions Program, although it surely would not be great enough to produce annual compliance cost reductions of \$100 million. Through the first two years, the program has attracted about 70 participants. It is expected that there will be 50 or less participants per year for the remainder of the program. If there are as many as 50 participants per year, their annual cost reduction would

have to average \$2 million to reach the economic effect threshold of \$100 million annually for a major rule. Indications from current participants are that the savings are much less.

The proposed amendment to the Early Reductions Rule regarding the content of enforceable commitments is a minor action. It requires no actions on the part of participants in the Early Reductions Program and only affects EPA's enforcement opportunities under the program. No economic effects are associated with the proposed change.

The proposed specialty permits rule and the proposed change to the Early Reductions Rule presented in this notice were submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any written EPA response to those comments will be included in the dockets listed at the beginning of today's notice under ADDRESSES. The dockets are available for public inspection at the EPA's Air Docket Section, which is listed in the ADDRESSES section of this preamble.

F Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the specialty permits rule and the amendment to the Early Reductions Rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities. The EPA estimates that this rule will have no direct economic impact on any business entities for two reasons. First, the Early Reductions Program is a voluntary program, an alternate means of complying with otherwise applicable standards forthcoming under section 112(d) of the Act. Generally, companies would participate in the program if they thought their compliance costs would be less than those associated with meeting otherwise applicable standards. Costs could be less because the 90 (95) percent reduction threshold to qualify for an extension likely will be lower than the reduction required by applicable section 112(d) standards. Moreover, the Early Reductions Rule provides owners or operators considerable flexibility to average qualifying reductions among participating emissions units.

Second, the specialty permits program rulemaking simply adapts for earlier use the intended mechanism for eventually delineating and enforcing all Act requirements at individual facilities, namely the title V permit. Sources not electing to participate in the Early Reductions Program would have to obtain title V permits anyway when comprehensive title V. Therefore, this

rulemaking does not add any additional requirements to participants. The impacts from the requirements of title V were considered in the promulgated part 70 rule for State comprehensive programs (57 FR 32250). Moreover, the proposed change to the Early Reductions Rule would have no economic effect on any large or small business entities.

List of Subjects in 40 CFR Part 71

Environmental protection, Air pollution control, Hazardous air pollutants, Operating permits, Reporting and recordkeeping requirements.

Dated: November 22, 1993.

Carol M. Browner,
Administrator.

Title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—COMPLIANCE EXTENSIONS FOR EARLY REDUCTIONS

1. The authority citation for part 63 subpart D continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart D—[Amended]

2. Section 63.75 is revised by adding paragraph (g) to read as follows:

§ 63.75 Enforceable commitments.

* * * * *

(g) The control measure information required under § 63.74(d)(1) as part of post-reduction emission documentation and submitted in a permit application according to the provisions of § 63.77 shall become part of an existing enforceable commitment upon receipt of the permit application by the permitting authority. An owner or operator shall notify the permitting authority of any change made to the source during calendar year 1994 which affects such control measure information and shall mail the notice within 5 days (postmark date) of making the change. The notice shall be considered an amendment to the source's enforceable commitment.

3. Part 71 is added to read as follows:

PART 71—FEDERAL OPERATING PERMIT PROGRAMS

Subpart A—[Reserved]

Subpart B—Permits for Early Reductions Sources

Sec.
71.21 Program overview.
71.22 Definitions.
71.23 Applicability.
71.24 Permit applications.
71.25 Permit content.
71.26 Permit issuance, reopenings, and revisions.

Sec.
71.27 Public participation and administrative review.
Authority: 42 U.S.C. 7401, et seq.

Subpart A—[Reserved]

Subpart B—Permits for Early Reductions Sources

§ 71.21 Program overview.

(a) The regulations in this subpart provide for a limited, Federal, title V, permit program to establish alternative emission limitations for early reductions sources that have demonstrated qualifying reductions of hazardous air pollutants under section 112(i)(5) of the Act. A permit issued under this subpart which establishes such an enforceable alternative emission limitation shall grant all emissions units in the early reductions source a six-year extension from otherwise applicable dates of compliance for standards promulgated under section 112(d) of the Act.

(b) After approval of a State's comprehensive permit program pursuant to title V of the Act, the Administrator may continue to issue specialty permits under this subpart only under the following circumstances:

(1) The early reductions source filed a permit application under this subpart before the State obtained approval of a comprehensive title V permit program but the permit had not been finally issued at the time of State program approval; or

(2) The early reductions source will be required to file an early reductions permit application under § 71.24(b) before a comprehensive permit application is required by the State under the approved program.

(c) A permit issued to an early reductions source under this subpart shall have a term not to exceed five years. Such a specialty permit shall be incorporated into a comprehensive title V permit subsequently issued to the facility containing the early reductions source, without reopening or revision of the specialty permit except as provided in § 71.26(e).

(d) Issuance of a specialty permit under this subpart does not relieve a source from an obligation to file a timely and complete comprehensive permit application as required under an approved comprehensive title V permit program.

(e) *Delegation to other permitting authorities.* (1) The Administrator may delegate to another permitting authority the responsibility to implement this permit program. Under such a delegation, the Administrator reserves the right to issue a final permit to early

reductions sources that filed permit applications with the Administrator prior to the permitting authority obtaining delegation.

(2) Under any delegation, the Administrator will require that the permitting authority have enforcement authority substantially equivalent to that specified in § 70.11 of this chapter.

(3) Upon any delegation, administrative appeals of permit decisions issued pursuant to the delegated program shall continue to be subject to the requirements of § 71.27(l).

§ 71.22 Definitions.

All terms used in this subpart not defined below are given the same meaning as in the Act or in subpart D of part 63 of this chapter.

Act means the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

Actual emissions means the actual rate of emissions of a pollutant, but does not include excess emissions from a malfunction, or startups and shutdowns associated with a malfunction. Actual emissions shall be calculated using the early reductions source's actual operating rates, and types of materials processed, stored, or combusted during the selected time period.

Affected States are all States:

(1) Whose air quality may be affected and that are contiguous to the State in which a permit, permit modification or permit renewal is being proposed; or

(2) That are within 50 miles of the permitted source.

Comprehensive title V permit program means a program approved by the Administrator under part 70 or a program promulgated for EPA permit issuance under title V that encompasses all applicable requirements of the Clean Air Act.

Draft permit means the version of a permit for which the Administrator offers public participation under § 71.27.

Early reductions source means an emitter of hazardous air pollutants as defined pursuant to § 63.73 of this chapter that is seeking to obtain a compliance extension through a permit application filed under this subpart.

Emissions unit means any part or activity of a stationary source that emits or has the potential to emit any hazardous air pollutant.

Enforceable commitment means a document drafted pursuant to section 112(i)(5)(B) of the Act and signed by a responsible company official which commits a company to achieving before January 1 1994 sufficient reductions in hazardous air pollutants from a designated early reductions source to qualify such source for a compliance

extension under section 112(i)(5)(A) of the Act.

The *EPA* or the *Administrator* means the Administrator of the EPA or his or her designee.

Final permit means the version of a permit issued by the Administrator under this subpart that has completed all review procedures required by § 71.27.

Hazardous air pollutant means any air pollutant listed pursuant to section 112(b) of the Act.

Permit means any permit covering an existing early reductions source that is issued, amended, or revised pursuant to this subpart.

Permit modification means a revision to a permit issued under this subpart that meets the requirements of § 71.26(d).

Permit revision means any permit modification or administrative permit amendment.

Permitting authority means either of the following:

(1) The Administrator, in the case of EPA-implemented programs; or

(2) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under this subpart.

Responsible official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the permitting authority;

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA).

State means any non-Federal permitting authority, including any

local agency, interstate association, or statewide program. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Where such meaning is clear from the context, "State" shall have its conventional meaning.

§ 71.23 Applicability.

(a) *Sources covered.* The provisions of this subpart apply to an owner or operator of an existing source who is seeking a compliance extension under section 112(i)(5) of the Act and who, pursuant to part 63, subpart D of this chapter, is required to file a permit application for the extension prior to the date a comprehensive title V permit program is approved for the State in which the existing source is located.

(b) *Covered emissions.* All hazardous air pollutant emissions from the early reductions source shall be included in permit applications and part 71 permits issued under this subpart.

§ 71.24 Permit applications.

(a) *Where to file.* To apply for a compliance extension and an alternative emission limitation under this subpart, the owner or operator of an early reductions source shall file a complete permit application with the appropriate EPA Regional Office. The owner or operator shall also send a copy of the application to the appropriate State agency; to the EPA Emission Standards Division, Mail Drop 13, Research Triangle Park, North Carolina, 27711 (attention: Early Reductions Officer); and to the EPA Office of Enforcement, EN-341W, 401 M Street, SW., Washington, DC 20460 (attention: Early Reductions Officer).

(b) *Deadlines.* (1) Permit applications under this subpart for early reductions sources not subject to enforceable commitments shall be submitted by the later of the following dates:

(i) Within 120 days of the date of proposal of an otherwise applicable standard issued under section 112(d) of the Act, or

(ii) 120 days after [THE EFFECTIVE DATE OF THIS SUBPART].

(2) Permit applications for early reductions sources subject to enforceable commitments established pursuant to § 63.75 of this chapter shall be filed no later than April 30, 1994.

(3) Except as provided in paragraph (b)(4) of this section, the post-reduction emissions information required under paragraph (e)(2) of this section shall not be filed as part of the initial permit application but shall be filed later as a supplement to the application. The

supplemental information shall be filed no earlier than one year after the date early reductions had to be achieved according to § 63.72(a)(2) of this chapter and no later than 13 months after such date.

(4) If a source test will be the supporting basis for establishing post-reduction emissions for one or more emissions units in the early reductions source, the test results shall be submitted by the deadline for submittal of a permit application under this section.

(c) *Complete application.* To be deemed complete, an application must provide all information required pursuant to paragraph (e) of this section, except for the information on post-reduction emissions required under paragraph (e)(2) of this chapter. Applications for permit revision need supply the information required under paragraph (e) of this section only if it is related to the proposed change. Information submitted under paragraph (e) of this section must be sufficient to allow the Administrator to determine if the early reductions source meets the applicable requirements of subpart D of part 63 of this chapter. Unless the Administrator determines that an application is not complete within 45 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in § 71.26(a)(3). If, while processing an application that has been determined or deemed to be complete, the Administrator determines that additional information is necessary to evaluate or take final action on that application, the Administrator may request such information in writing and set a reasonable deadline for a response.

(d) *Duty to supplement or correct application.* Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional or revised information as necessary to address any requirements of subpart D of part 63 of this chapter (Compliance Extensions for Early Reductions) or of this subpart that become applicable to the early reductions source after the date it filed a complete application but prior to release of a draft permit.

(e) *Required information.* Information as described below accounting for each emissions unit within the early reductions source shall be included in the application. Required information shall be submitted both in hard copy

and in a computerized format compatible with the Aerometric Information Retrieval System (AIRS). (Note: EPA has not yet finalized AIRS formatting requirements for title V permit information; additional information pertaining to computerized formats for title V submittals will be supplied upon publication of the final rule). The following elements are required information for permit applications under this subpart:

(1) Identifying information, including company name, telephone number, and address (and plant name, telephone number, and address if different from the company name); owner's name, telephone number, and agent; and telephone number(s) and name(s) of plant site manager/contact;

(2) All information required in § 63.74 of this chapter, including that needed to describe the early reductions source, its base year and post-reduction emissions, and supporting basis for the emissions;

(3) A statement of the proposed alternative emission limitation for hazardous air pollutants from the early reductions source on an annual basis, reflecting the emission reductions required to qualify the early reductions source for a compliance extension under subpart D of part 63 of this chapter;

(4) Additional proposed emission limits for specific emissions units, limitations on operation, work practice standards, and any other emission limiting requirements necessary to assure proper operation of installed control equipment and compliance with the annual alternative emission limitation for the early reductions source;

(5) Information necessary to define alternative operating scenarios for the early reductions source or permit terms and conditions for trading hazardous air pollutant increases and decreases under § 71.25(a)(10), including any associated permit terms and conditions needed to assure compliance with the alternative emission limitation under the alternative operating scenarios or pollutant trading;

(6) Statements related to compliance meeting the following criteria:

(i) A statement of methods proposed to determine compliance by the early reductions source with the proposed alternative emission limitation, including a description of monitoring devices and activities, recordkeeping, and reporting requirements and test methods;

(ii) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually; and

(iii) A statement indicating the early reductions source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(f) Any application form, report, or compliance certification submitted pursuant to the regulations in this subpart shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

§ 71.25 Permit content.

(a) *Standard permit requirements.* Each permit issued under this subpart shall include the following elements:

(1) *Alternative emission limitation.* An annual alternative emission limitation for hazardous air pollutants from the early reductions source reflecting the 90 percent reduction (95 percent for hazardous air pollutants which are particulate matter) which qualified the early reductions source for a compliance extension under subpart D of part 63 of this chapter;

(2) *Additional emission limitations.* Additional emission limitations, limitations on operation, work practice standards, and any other emission limiting requirements for the early reductions source necessary to assure compliance with the alternative emission limitation;

(3) *Monitoring requirements.* Each permit shall contain the following monitoring requirements;

(i) All emissions monitoring and analysis procedures or test methods necessary to assure compliance with the emission limitations established under paragraphs (a) (1) and (2) of this section. Such monitoring or testing shall be consistent with the demonstration made pursuant to § 63.74 of this chapter and any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act;

(ii) Periodic monitoring or testing sufficient to yield reliable data from the relevant time period that are representative of the early reductions source's compliance with the permit. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the demonstration made pursuant to § 63.74 of this chapter. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph (a)(3)(ii) of this chapter; and

(iii) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(4) *Recordkeeping requirements.* The permit shall contain recordkeeping requirements including the following, as applicable:

(i) Records of required monitoring information that include the following:

(A) The date, place as defined in the permit, and time of sampling or measurements;

(B) The date(s) analyses were performed;

(C) The company or entity that performed the analyses;

(D) The analytical techniques or methods used;

(E) The results of such analyses; and

(F) The operating conditions as existing at the time of sampling or measurement;

(ii) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original stripchart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(5) *Reporting requirements.* The permit shall require the following:

(i) Submittal of reports of all required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports; and

(ii) Reporting within ten calendar days of any deviations from permit requirements, including those attributable to upset conditions as defined in the permit. Such reports shall include the probable cause of such deviations and any corrective actions or preventive measures taken.

(6) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(7) Provisions stating the following:

(i) The permittee must comply with all conditions of the part 71 permit issued under this subpart. A violation of an alternative emission limitation, as well as any other requirement established in a permit issued under this subpart, is enforceable pursuant to the authority of section 113 of the Act, notwithstanding any demonstration of continuing 90 percent (95 percent in the case of hazardous air pollutants which are particulates) emission reduction over the entire early reductions source. Any permit noncompliance constitutes a violation of the Act and is grounds for

enforcement action or for permit termination, revocation and reissuance, or modification.

(ii) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(iii) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(iv) The permit does not convey any property rights of any sort, or any exclusive privilege.

(v) The permittee shall furnish to the Administrator, within a reasonable time, any information that the Administrator may request in writing to determine whether cause exists for modifying the permit, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Administrator copies of records required to be kept by the permit.

(8) If required by the Administrator, a provision to ensure that an early reductions source pays fees to the Administrator consistent with the level of effort expended by the Administrator in issuing the permit pursuant to this subpart.

(9) Terms and conditions for reasonably anticipated operating scenarios identified by the early reductions source in its application as approved by the Administrator. Such terms and conditions:

(i) Shall require the early reductions source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating; and

(ii) Must ensure that the terms and conditions of each such alternative scenario meet the alternative emission limitation and the requirements of this subpart.

(10) Terms and conditions, if the permit applicant requests them, for the trading of hazardous air pollutant emissions increases and decreases among emissions units within the early reductions source without permit revision or case-by-case approval of each emissions trade, provided that:

(i) Such terms and conditions include all terms required under paragraphs (a)

and (c) of this section to determine compliance;

(ii) The changes in hazardous air pollutant emissions do not exceed the emissions allowable under the permit;

(iii) The changes in hazardous air pollutant emissions are not modifications under any provision of title I of the Act; and

(iv) The early reductions source owner or operator provides the Administrator written notification at least 7 days in advance of the proposed changes and includes in the notification a description of the change in emissions that will occur, when the change will occur, and how the increases and decreases in emissions will comply with the alternative emission limitation and other terms and conditions of the permit.

(b) *Federally enforceable requirements.* All terms and conditions in a permit issued under this subpart are enforceable by the Administrator and citizens under the Act.

(c) *Compliance requirements.* All permits issued under this subpart shall contain the following elements with respect to compliance:

(1) Consistent with paragraphs (a)(3), (a)(4), and (a)(5) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a permit shall contain a certification by a responsible official that meets the requirements of § 71.24(f).

(2) Inspection and entry provisions that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Administrator or an authorized representative to perform the following:

(i) Enter upon the permittee's premises where the early reductions source is located or emissions-related activity is conducted, or where required records are kept;

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(iii) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(iv) Sample or monitor at reasonable times substances or parameters for the purpose of determining compliance with the permit.

(3) Requirements for compliance certification with terms and conditions

contained in the permit, including the alternative emission limitation. Permits shall include each of the following:

- (i) The frequency (not less than annually) of submissions of compliance certifications;
- (ii) Consistent with paragraph (a)(3) of this section, a means for monitoring the compliance of the early reductions source with its alternative emission limitation;
- (iii) A requirement that the compliance certification include the following:
 - (A) The identification of each term or condition of the permit that is the basis of the certification;
 - (B) The compliance status;
 - (C) Whether compliance was continuous or intermittent;
 - (D) The method(s) used for determining the compliance status of the early reductions source, currently and over the reporting period consistent with paragraph (a)(3) of this section; and
 - (E) Such other facts as the permitting authority may require to determine the compliance status of the early reductions source;

(iv) A requirement that all compliance certifications be submitted to the Administrator or the Administrator's designated agent; and

(v) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act.

(4) Such other provisions as the Administrator may require.

(d) *Permit shield.* (1) The Administrator will expressly include in a permit issued pursuant to this subpart a provision stating that compliance with the conditions of the permit shall be deemed compliance with part 63, subpart D of this chapter (the Early Reductions Rule), as of the date of permit issuance.

(2) A permit shield may be extended to all permit terms and conditions that allow increases and decreases in hazardous air pollutant emissions pursuant to paragraph (a)(10) of this section.

(3) Nothing in this paragraph or in any permit issued pursuant to this subpart shall alter or affect the following:

(i) The provisions of section 303 of the Act (emergency orders),

(ii) The liability of an owner or operator of an early reductions source for any violation of applicable requirements prior to or at the time of permit issuance, or

(iii) The ability of the Administrator to obtain information from an early reductions source pursuant to section 114 of the Act.

(e) *Emergency provision*—(1) *Definition.* An "emergency" means any

situation arising from sudden and reasonably unforeseeable events beyond the control of the early reductions source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the early reductions source to exceed an emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) *Effect of an emergency.* An emergency constitutes an affirmative defense to an action brought for noncompliance with such an emission limitation if the conditions of paragraph (e)(3) of this section are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(ii) The permitted facility was at the time being properly operated;

(iii) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission limitation, or other requirements in the permit; and

(iv) The permittee submitted notice of the emergency to the Administrator within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph (a)(5)(ii) of this section. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

§ 71.26 Permit issuance, reopenings, and revisions.

(a) *Action on application.* (1) A permit or permit modification may be issued only if all of the following conditions have been met:

(i) The Administrator has received a complete application for a permit or permit modification;

(ii) The requirements for public participation under § 71.27 have been followed; and

(iii) The conditions of the proposed permit or permit modification meet all the requirements of § 71.25 and provide for compliance with an alternative

emission limitation reflecting the emissions reduction which qualified the early reductions source for a compliance extension under part 63, subpart D of this chapter.

(2) The Administrator will take final action on each permit application (including a request for permit modification) within 12 months after receiving a complete application, except that final action may be delayed where an applicant fails to provide additional information in a timely manner as requested by the Administrator under § 71.24(c).

(3) The Administrator will promptly provide notice to the applicant of whether the application is complete. Unless the Administrator requests additional information or otherwise notifies the applicant of incompleteness within 45 days of receipt of an application, the application shall be deemed complete.

(4) If a source submits a timely and complete application for permit issuance, the source's failure to have a title V permit for purposes of any requirements under section 112 pertaining to the early reductions source is not a violation of this part until the Administrator takes final action on the permit application. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph (a)(3) of this section, and as required by § 71.24(d), the applicant fails to submit by the deadline specified in writing by the Administrator any additional information identified as being needed to process the application.

(b) *Permit renewal and expiration.* (1) Permits issued under this subpart shall not be renewed. Permit renewal for expiring permits issued under this subpart shall be accomplished according to the requirements of title V of the Act for comprehensive permits for the facility containing the early reductions source.

(2) Except as specified in paragraph (b)(3) of this section, permit expiration terminates the early reductions source's right to operate.

(3) If, consistent with the requirements of title V of the Act, a timely and complete application for a comprehensive title V permit for the facility containing the early reductions source has been submitted but the permitting authority has failed to issue or deny the comprehensive permit prior to expiration of a permit issued under this subpart, then the existing permit for the early reductions source shall not expire until the comprehensive title V permit for the facility has been issued or denied.

(c) *Administrative permit amendments.* (1) An "administrative permit amendment" is a permit revision that:

(i) Corrects typographical errors;
 (ii) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(iii) Requires more frequent monitoring or reporting by the permittee; or

(iv) Allows for a change in ownership or operational control of an early reductions source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority.

(2) *Administrative permit amendment procedures.* An administrative permit amendment may be made by the Administrator consistent with the following:

(i) The Administrator will take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that any such permit revisions are designated as having been made pursuant to this paragraph.

(ii) The early reductions source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(d) *Permit modification.* (1) A permit modification is any revision to a permit issued under this subpart that cannot be accomplished under the program's provisions for administrative permit amendments under paragraph (c) of this section.

(2) *Modification procedures.* Permit modifications shall meet all requirements of this subpart, including those for applications, public participation, and review by affected States, as they apply to permit issuance. The Administrator shall complete review on permit modifications within 12 months after receipt of a complete application.

(e) *Reopening for cause.* (1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened. A permit shall be reopened and revised under any of the following circumstances:

(i) The Administrator determines that the permit contains a material mistake

or that inaccurate statements were made in establishing the emission limits or other terms or conditions of the permit.

(ii) The Administrator determines that the permit must be revised to assure compliance with the alternative emission limitation.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists.

(3) Reopenings under paragraph (e)(1) of this section shall not be initiated before a notice of such intent is provided to the early reductions source by the Administrator. Such notice will be provided at least 30 days in advance of the date that the permit is to be reopened, except that the Administrator may provide a shorter time period in the case of an emergency.

(f) *EPA review under State programs for issuing specialty permits.* (1) If the Administrator approves a State program for the implementation of this subpart, the State program shall require that the Administrator receive a copy of each permit application (including any application for permit modification), each proposed permit, and each final permit issued pursuant to this subpart. The State program may require that the applicant provide a copy of any permit application directly to the Administrator.

(2) The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with requirements under this subpart or part 63 of this chapter. If the Administrator objects in writing within 45 days of receipt of a proposed permit and all necessary supporting documentation, the State shall not issue the permit.

(3) Any EPA objection to a proposed permit will include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections. The Administrator will provide the permit applicant a copy of the objection.

(4) Failure of the State to do any of the following also shall constitute grounds for an objection:

(i) Comply with paragraph (f)(1) of this section;

(ii) Submit any information necessary to review adequately the proposed permit; or

(iii) Process the permit under procedures approved to meet paragraph (f) of this section.

(5) If the State fails, within 90 days after the date of an objection under paragraph (f)(2) of this section, to revise and submit a proposed permit in

response to the objection, the Administrator will issue or deny the permit in accordance with the requirements of this subpart.

(6) *Public petitions to the Administrator.* Within 60 days after expiration of the Administrator's 45-day review period, any person may petition the Administrator in writing to make an objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for and consistent with § 71.27, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this paragraph, the permitting authority shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an objection. If the permitting authority has issued a permit prior to receipt of an EPA objection under this paragraph, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in 40 CFR 70.7(g)(4) or (g)(5)(i) except in unusual circumstances, and the permitting authority may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

§ 71.27 Public participation and administrative review.

All permit proceedings, including preparation of draft permits, initial permit issuance, permit modifications, and granted appeals, shall provide adequate procedures for public participation, including notice, opportunity for comment, a hearing if requested, and administrative appeal. Specific procedures shall include the following:

(a) *Modification, revocation and reissuance, or termination of permits.* (1) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Administrator's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in §§ 71.25(a)(7) and 71.26(e). All requests shall be in writing and shall contain facts or reasons supporting the request

(2) If the Administrator decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Administrator may be informally appealed to the Environmental Appeals Board by a letter briefly setting forth the relevant facts. The Board may direct the Administrator to begin modification, revocation and reissuance, or termination proceedings under paragraph (a)(3) of this section. The appeal shall be considered denied if the Board takes no action within 60 days after receiving it. This informal appeal is, under 42 U.S.C. 307, a prerequisite to seeking judicial review of EPA action in denying a request for modification, revocation and reissuance, or termination.

(3) (i) Except in the case of administrative modifications of permits, if the Administrator tentatively decides to modify or revoke and reissue a permit under §§ 71.25(a)(7) and 71.26(e), he or she shall prepare a draft permit under paragraph (b) of this section incorporating the proposed changes. The Administrator may request additional information and, in the case of a modified permit, shall require the submission of an updated application. In the case of revoked and reissued permits, the Administrator shall require the submission of a new application.

(ii) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(4) If the Administrator tentatively decides to terminate a permit under §§ 71.25(a)(7) and 71.26(e), he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under paragraph (b) of this section. A notice of intent to terminate shall not be issued if the Administrator and the permittee agree to termination in the course of transferring permit responsibility to an approved State under § 71.21(e).

(5) Any request by the permittee for modification to an existing permit shall be treated as a permit application and shall be processed in accordance with all requirements of § 71.24.

(b) *Draft permits.* (1) Once an application is complete, the Administrator shall tentatively decide whether to prepare a draft permit or to deny the application.

(2) If the Administrator tentatively decides to deny the permit application, he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. If the Administrator's final decision is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (b)(4) of this section.

(3) If the Administrator decides to prepare a draft permit, he or she shall prepare a draft permit that contains the permit conditions under § 71.25.

(4) All draft permits prepared under this section shall be publicly noticed and made available for public comment. The Administrator shall give notice of opportunity for a public hearing, issue a final decision and respond to comments. For all early reductions permits, an appeal may be taken under paragraph (l) of this section.

(c) *Statement of basis.* The Administrator shall prepare a statement of basis for every draft permit. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

(d) *Public notice of permit actions and public comment period—(1) Scope—(i)* The Administrator shall give public notice that the following actions have occurred:

(A) A permit application has been tentatively denied under paragraph (b)(2) of this section;

(B) A draft permit has been prepared under paragraph (b)(3) of this section;

(C) A hearing has been scheduled under paragraph (f) of this section;

(D) An appeal has been granted under paragraph (l)(3) of this section.

(ii) No public notice is required in the case of administrative permit modifications, or when a request for permit modification, revocation and reissuance, or termination has been denied under paragraph (a)(2) of this

section. Written notice of that denial shall be given to the requester and to the permittee.

(iii) Public notices may describe more than one permit or permit action.

(2) *Timing.* (i) Public notice of the preparation of a draft permit or permit modification (including a notice of intent to deny a permit or permit modification application) shall allow at least 30 days for public comment.

(ii) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit or permit modification and the two notices may be combined.)

(iii) The Administrator shall provide such notice and opportunity for participation to Affected States on or before the time that the Administrator provides this notice to the public.

(3) *Methods.* Public notice of activities described in paragraph (d)(1)(i) of this section shall be given by the following methods:

(i) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any permit):

(A) The applicant;

(B) Any other agency which the Administrator knows has issued or is required to issue any other permit under the Clean Air Act for the same facility or activity;

(C) Affected States and Indian Tribes;

(D) Affected State and local air pollution control agencies, the chief executives of the city and county where the early reductions source is located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the regulated activity;

(E) Persons on a mailing list developed by:

(1) Including those who request in writing to be on the list;

(2) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals. (The Administrator may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Administrator may delete from the list the name of any person who fails to respond to such a request.)

(4) To any unit of local government having jurisdiction over the area where the early reductions source is located and to each State agency having any authority under State law with respect to the operation of such source.

(ii) By publication of a notice in a daily or weekly newspaper of general circulation within the area affected by the early reductions source.

(iii) By any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) *Contents.*

(i) *All public notices.* All public notices issued under this subpart shall contain the following minimum information:

(A) The name and address of the Administrator or the Administrator's designated agent processing the permit;

(B) The name and address of the permittee or permit applicant and, if different, of the facility regulated by the permit;

(C) The activity or activities involved in the permit action;

(D) The emissions change involved in any permit modification;

(E) The name, address and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, all relevant supporting materials, and all other materials available to the Administrator that are relevant to the permit decision;

(F) A brief description of the comment procedures required by paragraphs (e) and (f) of this section and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

(G) Any additional information considered necessary or proper.

(ii) *Public notices for hearings.* In addition to the general public notice described in paragraph (d)(4)(i) of this section, the public notice of a hearing under paragraph (f) of this section shall contain the following information:

(A) Reference to the date of previous public notices relating to the permit;

(B) Date, time, and place of the hearing;

(C) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(5) In addition to the general public notice described in paragraph (d)(4)(i) of this section, all persons identified in paragraphs (d)(3)(i)(A), (B), and (C) of

this section shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any), and the draft permit (if any).

(e) *Public comments and requests for public hearings.* During the public comment period provided under paragraph (a) of this section, any interested person may submit written comments on the draft permit or permit modification and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised at the hearing. All comments shall be considered in making the final decision and shall be answered as provided in paragraph (j) of this section. The Administrator will keep a record of the commenters and of the issues raised during the public participation process, and such records shall be available to the public.

(f) *Public hearings.* (1)(i) The Administrator shall hold a hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit or permit modification;

(ii) The Administrator may also hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision;

(iii) Public notice of the hearing shall be given as specified in paragraph (d) of this section.

(2) Whenever a public hearing is held, the Administrator shall designate a Presiding Officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(3) Any person may submit oral or written statements and data concerning the draft permit or permit modification. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under paragraph (d) of this section shall be automatically extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made available to the public.

(g) *Obligation to raise issues and provide information during the public comment period.* All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Administrator's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all

reasonably ascertainable arguments supporting their position by the close of the public comment period (including any public hearing). Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials.

Commenters shall make supporting materials not already included in the administrative record available to EPA as directed by the Administrator. (A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this section.

Additional time shall be granted to the extent that a commenter who requests additional time demonstrates the need for such time.)

(h) *Reopening of the public comment period.* (1)(i) The Administrator may order the public comment period reopened if the procedures of this paragraph could expedite the decisionmaking process. When the public comment period is reopened under this paragraph, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Administrator's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date, not less than 60 days after public notice under paragraph (h)(1)(ii) of this section, set by the Administrator. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than 20 days after the date set for filing of the material, set by the Administrator.

(ii) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of paragraph (h)(1)(i) of this section shall apply.

(iii) On his or her own motion or on the request of any person, the Administrator may direct that the requirements of paragraph (h)(1)(i) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (h)(1)(i) of this section will substantially expedite the decisionmaking process. The notice of the draft permit shall state whenever this has been done.

(iv) A comment period of longer than 60 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they shall be granted to the extent they appear necessary.

(2) If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Administrator may take one or more of the following actions:

(i) Prepare a new draft permit, appropriately modified;

(ii) Prepare a revised statement of basis, a fact sheet or revised fact sheet, and reopen the comment period; or

(iii) Reopen or extend the comment period to give interested persons an opportunity to comment on the information or arguments submitted.

(3) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice shall define the scope of the reopening.

(4) Public notice of any of the above actions shall be issued under paragraph (d) of this section.

(i) *Issuance and effective date of permit.* (1) After the close of the public comment period on a draft permit, the Administrator shall issue a final permit decision. The Administrator shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit. For the purposes of this paragraph (i), a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(2) A final permit decision shall become effective 30 days after the service of notice of the decision unless:

(i) A later effective date is specified in the decision; or

(ii) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

(j) *Response to comments.* (1) At the time that any final permit decision is issued, the Administrator shall issue a response to comments. This response shall:

(i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(ii) Briefly describe and respond to all significant comments on the draft

permit raised during the public comment period, or during any hearing.

(2) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in paragraph (k) of this section. If new points are raised or new material supplied during the public comment period, EPA may document its response to those matters by adding new materials to the administrative record.

(3) The response to comments shall be available to the public.

(4) The Administrator will notify in writing any Affected State of any refusal to accept recommendations for the permit that the State submitted during the public or Affected State review period.

(k) *Administrative record for final permit.* (1) The Administrator shall base final permit decisions on the administrative record defined in this paragraph (k).

(2) The administrative record for any final permit shall consist of:

(i) All comments received during the public comment period, including any extension or reopening;

(ii) The tape or transcript of any hearing(s) held;

(iii) Any written material submitted at such a hearing;

(iv) The response to comments required by paragraph (j) of this section and any new materials placed in the record under paragraph (j) of this section;

(v) Other documents contained in the supporting file for the permit;

(vi) The final permit;

(vii) The application and any supporting data furnished by the applicant;

(viii) The draft permit or notice of intent to deny the application or to terminate the permit;

(ix) The statement of basis for the draft permit;

(x) All documents cited in the statement of basis.

Other documents contained in the supporting file for the draft permit.

(3) The additional documents required under paragraph (k)(2) of this section should be added to the record as soon as possible after their receipt or publication by EPA. The record shall be complete on the date the final permit is issued.

(4) This section applies to all final permits.

(5) Material readily available at the issuing Regional Office, or published materials which are generally available and which are included in the administrative record under the standards of paragraph (j) of this section

("response to comments"), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or fact sheet or in the response to comments.

(l) *Appeal of permits.* (1) within 30 days after a final permit decision has been issued, any person who filed comments on the draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. The 30-day period within which a person may request review under this subsection begins with the service of notice of the Administrator's action unless a later date is specified in that notice. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues raised were raised during the public comment period (including any public hearing) to the extent required by the regulations in this subpart unless the petitioner demonstrates that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period, and, when appropriate, a showing that the condition in question is based on:

(i) A finding of fact or conclusion of law which is clearly erroneous, or

(ii) An exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review.

(2) The Board may also decide on its initiative to review any condition of any permit issued under this subpart. The Board must act under this paragraph within 30 days of the service date of notice of the Administrator's action.

(3) Within a reasonable time following the filing of the petition for review, the Board shall issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. Public notice of any grant of review by the Board under paragraph (l) (1) or (2) of this section shall be given as provided in paragraph (d) of this section. Public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file an amicus brief. Notice of denial of review shall be sent only to applicant and to the person(s) requesting review.

(4) A petition to the Board under paragraph (l)(1) of this section is, under 42 U.S.C. 307(b), a prerequisite to the seeking of judicial review of the final agency action.

(5)(i) For purposes of judicial review, final agency action occurs when a final permit is issued or denied by EPA and agency review procedures are exhausted. A final permit decision shall be issued by the Administrator:

(A) When the Board issues notice to the parties that review has been denied;

(B) When the Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(C) Upon the completion of remand proceedings if the proceedings are remanded, unless the Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(ii) *Reserved.*

(6) Neither the filing of a petition for review of any condition of the permit or permit decision nor the granting of an appeal by the Environmental Appeals Board shall stay the effect of any contested permit or permit condition.

(m) *Computation of time.* (1) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(2) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event, except as otherwise provided.

(3) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

(4) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days shall be added to the prescribed time.

[FR Doc. 93-31359 Filed 12-28-93; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 141

[WH-FRL-4818-3]

Drinking Water Maximum Contaminant Level Goal; Fluoride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent not to revise fluoride drinking water standards.

SUMMARY: By this notice, EPA is announcing its decision not to revise the maximum contaminant level goal (MCLG) for fluoride after considering

recent reports concerning the health effects of fluoride. EPA's decision is based in part on advice from the National Academy of Sciences that the existing MCLG for fluoride provides for the protection of the health of persons. EPA invites public comment on this decision.

DATES: Comments should be postmarked or delivered by hand on or before February 28, 1994.

ADDRESSES: Send written comments to Fluoride Docket Clerk, Water Docket (MC-4101); U.S. Environmental Protection Agency; 401 M St. SW., Washington, DC 20460. Please submit any references cited in your comments. EPA requests an original and three copies of your comments and enclosures (including references). Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted as EPA can not ensure that they will be submitted to the Docket.

Supporting documentation for this notice as well as all comments received are available for review at the Water Docket at the address given above. For access to Docket materials, call (202) 260-3027 between 9 a.m. and 3:30 p.m. for an appointment.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, Telephone (800) 426-4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern time. For technical information, contact Ken Bailey, Health and Ecological Criteria Division, Office of Water (4304), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (202) 260-5535.

SUPPLEMENTARY INFORMATION: EPA regulates fluoride in drinking water under the Safe Drinking Water Act (SDWA). In 1985 and 1986, EPA promulgated three separate but related standards for fluoride in drinking water under the SDWA.

On November 14, 1985, EPA promulgated a recommended maximum contaminant level for fluoride in drinking water at 4 mg/L (50 FR 47142). The RMCL for fluoride was upheld by the U.S. Court of Appeals for the D.C. Circuit in *NRDC v. EPA*, 812 F.2d 721 (D.C. Cir. 1987). Since the publication of the RMCL for fluoride, the 1986 Amendments to the Safe Drinking Water Act changed the term "recommended maximum contaminant level" to "maximum contaminant level goal" or MCLG. MCLGs are nonenforceable health goals which are set at a level at which no known or anticipated adverse

health effects occur and which allows an adequate margin of safety. The 4 mg/L MCLG was designed to protect against crippling skeletal fluorosis.

On April 2, 1986, EPA promulgated a maximum contaminant level (MCL) for fluoride in drinking water at 4 mg/L (51 FR 11396). MCLs are enforceable standards and are to be set as close to the MCLGs as feasible. "Feasible" means feasible with the use of the best technology, treatment techniques and other means which the Administrator finds are available (taking cost into consideration).

At the same time, EPA promulgated a secondary maximum contaminant level (SMCL) for fluoride in drinking water of 2 mg/L to protect against objectionable dental fluorosis (51 FR 11396, 11401). Objectionable dental fluorosis includes moderate and severe dental fluorosis (50 FR 20164, 20169). Moderate dental fluorosis is characterized in part by white opaque areas covering at least 50% of a given tooth; severe dental fluorosis is characterized by stains and severe pitting of the teeth. SMCLs set limits for contaminants in drinking water which may affect the public welfare. SMCLs may apply to contaminants in drinking water which may affect aesthetic qualities of water and public acceptance, or which otherwise may affect the public welfare. SMCLs are not federally enforceable. The SMCL, at 40 CFR 143.5, provides for public notification when public water systems exceed the SMCL.

Since EPA promulgated the 4 mg/L MCL in 1986, a number of studies concerning fluoride in drinking water have been published. On January 3, 1990, EPA published a notice requesting additional information bearing on the existing standards for fluoride (55 FR 160). In that notice, EPA specifically requested copies of peer-reviewed scientific publications, published since January 1, 1985, dealing with the following topics as they relate to fluoride: (1) Possible adverse health effects (e.g., crippling skeletal fluorosis); (2) the incidence of objectionable dental fluorosis; (3) total exposure; and (4) water treatment technology and costs, especially in smaller public water supplies that serve from 25 to 3,300 persons. EPA received more than 1,500 responses to the January 3, 1990 notice.

On November 23, 1992, EPA published an update of its ongoing review of drinking water regulations for fluoride (57 FR 54957). In that update, EPA summarized significant events since the January 3, 1990 notice. Specifically, EPA noted that a 1990 report of the National Toxicology Program (NTP) which detailed a two-

year chronic rat and mouse fluoride bioassay, concluded that, while there was equivocal evidence of carcinogenic activity of sodium fluoride in male F344/N rats, there was no evidence of carcinogenic activity in female F344/N rats or male or female mice. The update also noted that, in 1990, the Procter and Gamble (P&G) Company published the results of a chronic fluoride bioassay in which the authors concluded that sodium fluoride is not carcinogenic in male or female Sprague-Dawley rats.

Finally, the update noted the publication of a 1991 Department of Health and Human Services (DHHS) review of the results of the benefits and risks of fluoride entitled "Review of Fluoride Benefits and Risks," which provides an extensive review of both the NTP and P&G bioassays, as well as a significant body of additional data. The DHHS review concluded that, "[t]aken together, the data available at this time from these two animal studies fail to establish an association between fluoride and cancer" and "optimal fluoridation of drinking water does not pose a detectable cancer risk in humans." (Review of Fluoride: Benefits and Risks. Report of the Ad Hoc Subcommittee on Fluoride of the Committee to Coordinate Environmental Health and Related Programs. Public Health Service, Department of Health and Human Services, February 1991.) The DHHS review recommended that EPA review the fluoride drinking water regulations in light of the DHHS review and upcoming fluoride conferences.

In December 1991, as part of EPA's fluoride risk assessment, EPA asked the National Academy Sciences (NAS) of the National Research Council to review current toxicological and exposure data on fluoride and determine whether EPA's existing drinking water standards are adequate for protecting the public from the adverse health effects of fluoride. EPA also asked that the NAS identify gaps in fluoride toxicity data and make recommendations for future research. Because the public comments EPA received in response to the January 3, 1990 notice raised many of the issues EPA expected the NAS to address, EPA made these comments available to the NAS, along with material EPA had gathered separately.

In response to EPA's request, the NAS's Committee on Toxicology organized the Subcommittee on Health Effects of Ingested Fluoride. The Subcommittee included scientists with expertise in toxicology, pathology, medicine, dentistry, epidemiology, biostatistics, and risk assessment. On August 17, 1993, the Subcommittee released its report entitled "Health

Effects of Ingested Fluoride." The preface to the Report summarized the work of the Subcommittee:

The Subcommittee reviewed various kinds of toxicity that have been attributed to ingestion of fluoride (dental fluorosis; bone fracture; reproductive, renal, gastrointestinal, and immunological toxicities; genotoxicity; and carcinogenicity) and assessed the current EPA drinking-water standard for fluoride to determine if it is protective of public health. The report of the subcommittee is intended for use by EPA in deciding whether to maintain or revise its current drinking-water standard for fluoride (NAS, 1993, p. xiii).

The Executive Summary to the NAS Report provided the conclusions of the Subcommittee:

Based on its review of available data on toxicity of fluoride, the Subcommittee concludes that EPA's current MCL of 4 mg/L for fluoride in drinking water is an appropriate interim standard. At that level, a small percentage of the U.S. population will exhibit moderate or even severe dental fluorosis. However, the question of whether to consider dental fluorosis a cosmetic effect or an adverse health effect and the balancing of the health risks and health benefits of fluoride are matters to be determined by regulatory agencies and are beyond the charge or expertise of this committee.

The Subcommittee found inconsistencies in the fluoride toxicity data base and gaps in knowledge. Accordingly, it recommends further research in the areas of fluoride intake, dental fluorosis, bone strength and fractures, and carcinogenicity. The subcommittee further recommends that EPA's interim standard of 4 mg/L should be reviewed when results of new research become available and, if necessary, revised accordingly (NAS, 1993, p. 11).

The Subcommittee, in its 133-page Report, evaluated in detail each of the following areas: Dental fluorosis, fluoride exposure and risk of bone fracture, reproductive effects of fluoride, effects of ingested fluoride on renal, gastrointestinal, and immune systems, genotoxicity of fluoride, carcinogenicity of fluoride and intake, metabolism, and disposition of fluoride (NAS, 1993). In each of these areas, the Subcommittee prepared detailed evaluations of available data and provided conclusions and, in some areas, recommendations for research.

As previously indicated, the Report noted that the question of whether to consider dental fluorosis a cosmetic effect or an adverse health effect was beyond the change or expertise of the NAS. Consequently, the Report contained no recommendations in this regard. On the issue of whether objectionable dental fluorosis should be considered a cosmetic effect or an adverse health effect, EPA has no new information leading the Agency to change the decision by former EPA

Administrator, Lee Thomas, that objectionable dental fluorosis is a cosmetic effect and not an adverse health effect. That decision was supported by determinations of the former U.S. Surgeon General, C. Everett Koop (See 51 FR at 11401-11402; *NRDC v. EPA*, 812 F.2d 721, 724 (D.C. Cir. 1987); see also 50 FR 47142, 47143-47147). EPA will continue to consider any new information that might suggest otherwise. EPA also has requested advice from the U.S. Surgeon General, Dr. Joycelyn Elders, regarding the issue of whether dental fluorosis should be considered as an adverse health effect. Should that advice suggest a reconsideration of former Administrator Lee Thomas' decision, EPA will undertake such a review.

In conclusion, EPA believes the recommendations of the NAS Subcommittee on Health Effects of Ingested Fluoride support a decision not to revise the current MCLG for fluoride at this time. At this time, EPA has no evidence suggesting that the MCLG does not protect against adverse health effects with an adequate margin of safety and reaffirms the existing MCLG of 4 mg/L. EPA will consider any new evidence suggesting that the existing MCLG does not protect against adverse health effects with an adequate margin of safety.

Research is currently underway on the areas recommended by the NAS. EPA anticipates that results from that research will become available on an ongoing basis and will complete by 2001. EPA solicits public comment on this decision and will issue a final decision after consideration of comments received.

Dated: December 16, 1993.

Carol M. Browner,
Administrator, U.S. Environmental Protection Agency.

[FR Doc. 93-31701 Filed 12-28-93; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 180

[OPP-300308; FRL-4649-7]

RIN No. 2070-AC18

Polyethylene Glycol-Polyisobutenyl Anhydride-Tall Oil Fatty Acid Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of polyethylene glycol-polyisobutenyl anhydride-tall oil fatty acid copolymer

when used as an inert ingredient (surfactant, dispersing agent, suspending agent, or related adjuvant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. This proposed regulation was requested by ICI Americas, Inc.

DATES: Comments, identified by the document control number [OPP-300308], must be received on or before January 28, 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, deliver comments to: Rm. 1132, Crystal Mall Bldg. #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 will be included in the public docket by EPA without prior notice. The public docket is 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: Connie Welch, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Bldg. North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: ICI Americas, Inc., Wilmington DE 19897, has submitted pesticide petition (PP) 3E4201 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of polyethylene glycol-polyisobutenyl anhydride-tall oil fatty acid copolymer when used as an inert ingredient (surfactant, dispersing agent, suspending agent, or related adjuvant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the *Federal Register* of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk. The Agency has decided that the data normally required to support the proposed tolerance exemption for polyethylene glycol-polyisobutenyl anhydride-tall oil fatty acid copolymer will not need to be submitted. The rationale for this decision is described below:

In the case of certain chemical substances which are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Polyethylene glycol-polyisobutenyl anhydride-tall oil fatty acid copolymer conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria which are used to identify low-risk polymers:

1. The minimum number-average molecular weight of the above-mentioned copolymer is 5,000. Substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin,

and substances with molecular weights greater than 1,000 are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

2. The above-mentioned copolymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

3. The above-mentioned copolymer does not contain less than 32.0 percent by weight of the atomic element carbon.

4. The above-mentioned copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. The above-mentioned copolymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. The above-mentioned copolymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.

7. The above-mentioned copolymer is not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. The above-mentioned copolymer does not contain reactive functional groups that are intended or reasonably anticipated to undergo further reaction.

9. The above-mentioned copolymer is not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a 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, [OPP-300308]. 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.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

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 effect 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, Recording and recordkeeping requirements.

Dated: December 10, 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. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *
(c) * * *

Inert ingredients	Limits	Uses
Polyethylene glycol-polyisobutenyl anhydride-tall oil fatty acid copolymer (minimum number-average molecular weight 5,000).	Surfactant, dispersing agent, suspending agent, or related adjuvant.

[FR Doc. 93-31476 Filed 12-28-93; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410, 417, and 424

[BPD-706-P]

RIN 0938-AE99

Medicare Program; Medicare Coverage and Payment of Clinical Psychologist, Other Psychologist, and Clinical Social Worker Services

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

ACTION: Proposed rule.

SUMMARY: These proposed regulations would address the provisions of section 6113 of the Omnibus Budget Reconciliation Act of 1989 and section 4157 of the Omnibus Budget Reconciliation Act of 1990 by establishing requirements for Medicare coverage of services furnished by a clinical psychologist or as an incident to the services of a clinical psychologist and for services furnished by a clinical social worker. We are also proposing that clinical psychologists and clinical social workers use International Classification of Diseases, 9th Revision,

Clinical Modification (ICD-9-CM) coding when submitting Medicare Part B claims.

DATES: To be considered, comments must be mailed or delivered to the appropriate address, as provided below and must be received by 5 p.m. on February 28, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-706-P, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD-706-P. Comments received timely will be available for public inspection as they are received, beginning approximately 3 weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

Please address a copy of comments on information collection requirements to: Allison Herron Eydt, HCFA Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Regina Walker, (410) 966-6735, regarding coverage issues. Elisa Tunanidas, (410) 966-4505, regarding payment issues.

SUPPLEMENTARY INFORMATION:

I. Background

A. Clinical Psychologist Services

Before the enactment of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), Public Law 101-239, Medicare Part B paid for the services of clinical psychologists (CPs) only in certain situations. Services of CPs could be covered if furnished as an incident to the services of a physician (under section 1861(s)(2)(A) of the Social Security Act (the Act)) and also if furnished as outpatient hospital services under sections 1861(s)(2)(B), 1861(s)(2)(C), and 1861(ff)(2)(A) of the Act. In addition, CP services could be covered in other settings such as risk-based health maintenance organizations (HMOs) or competitive medical plans (CMPs), comprehensive outpatient rehabilitation facilities (CORFs), and community mental health centers

(CMHCs). Under certain circumstances described below, services could be covered when furnished off-site from a CMHC. Medicare Part B paid for the services if the CP was legally authorized to perform the services and if the services would have been covered if furnished by a physician or as an incident to a physician's service.

With respect to outpatient hospital services, Medicare Part B covers both the diagnostic and therapeutic services furnished by hospitals, or under arrangements by hospitals, to its outpatients. Covered diagnostic services to outpatients generally can include the services of nurses, psychologists, and technicians, drugs and biologicals necessary for diagnostic study, and the use of supplies and equipment.

For CP services furnished other than through a CMHC, payment was based on the payment methodology applicable to the facility. Payment was made directly to a CP only for services furnished through a CMHC and only on an assignment-related basis. Payment could also be made to a CP for services and supplies furnished at a CMHC or off-site of a CMHC as an incident to a CP's services if the services would be covered if furnished by a physician or as an incident to a physician's service. Payment to a CP was based on the lesser of the actual charge for the services or a fee schedule established by the Secretary. Additionally, under the predecessor provisions of section 1833(c) of the Act, payment in any year was limited to 80 percent of the lesser of an annual dollar amount specified by law (for example, \$1,375 for 1989) or the "incurred expense" (62½ percent of the Medicare approved amount). The services of a CP furnished in a CMHC or off-site of a CMHC, and those services incident to a CP's services, were characterized in the law as "qualified psychologist services."

The relevant statutory provisions contained in the Act are as follows:

- Concerning amounts paid for CP services—section 1833(a)(1)(L).
- Concerning the limitation on payment for mental health treatment services—section 1833(c).
- Concerning assignment—section 1833(p).
- Concerning covered services—sections 1861(s)(2)(M) and 1861(aa)(1)(B).
- Concerning definition of "qualified psychologist services"—section 1861(ii).
- Concerning CP services in an HMO—section 1861(s)(2)(H)(ii).
- Concerning CP services in a CORF—section 1861(cc)(1)(D).

Section 6113(a) of OBRA '89, which was generally effective on July 1, 1990,

revised section 1861(ii) of the Act by removing the restriction under which qualified psychologist services had to be furnished at a CMHC, or off-site if the patient was unable to travel to the center because of physical or mental impairment, institutionalization, or a similar reason. This, in effect, allows payment to be made directly to a CP for qualified psychologist services furnished by the CP or incidental to the CP's services (except for services furnished to hospital patients). The provision was effective for services furnished as of July 1, 1990. Section 1833(p) of the Act, which requires that payment for qualified psychologist services be made only on an assignment-related basis, was unchanged by the OBRA '89 amendments.

Section 6113(d) of OBRA '89 amended section 1833(d)(1) of the Act to eliminate the dollar limitation on payment for outpatient mental health treatment but retained the 62½ percent limitation. (Note that section 1833(d)(1) has been redesignated as section 1833(c) by the Medicare Catastrophic Coverage Repeal Act of 1989, Pub. L. 101-234.) This change applies to expenses for mental health treatment services incurred beginning with calendar year 1990.

Section 6113(c) of OBRA '89 requires the Secretary, while taking into consideration concerns for patient confidentiality, to develop criteria regarding direct payment to CPs under which the CPs must agree to consult with a patient's attending physician.

As a further development, section 4157(a) of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101-508, amended section 1861(b) of the Act, which defines "inpatient hospital services," by revising paragraph (3) to exclude, effective January 1, 1991, CP services furnished to a hospital inpatient from the definition. In addition, section 4157(c) of OBRA '90 amended section 1862(a) of the Act, which concerns exclusions from coverage, by revising paragraph (14) to permit direct billing by CPs for qualified psychologist services and those services and supplies incident to their services if provided to hospital patients. (We had determined, based on the way the Act read as of July 1, 1990, that the services of CPs and services incident to a CP's services provided to hospital patients were "bundled" so that only the hospital could bill for them and, therefore, direct billing for these services did not apply.)

B. Diagnostic Psychological Tests

Before enactment of the qualified psychologist services benefit (that is, the CP benefit authorized under section 1861(ii) of the Act), HCFA authorized, under section 1861(s)(3) of the Act, Medicare coverage for diagnostic psychological testing services performed by a qualified psychologist practicing independently of an institution, agency, or physician's office. In order to have his or her diagnostic services covered under this provision, the psychologist must have met certain qualifications and the diagnostic services must have been ordered by a physician. These services were covered as "other diagnostic tests" and Medicare paid for them on a reasonable charge basis.

C. Clinical Social Worker Services

Before the enactment of OBRA '89, services of a clinical social worker (CSW) were payable by Medicare Part B when furnished in various settings, such as a risk-based HMO, as part of hospital outpatient services under sections 1861(s)(2)(B), 1861(s)(2)(C), and 1861(ff)(2)(C) of the Act, or as an incident to the services of a physician under section 1861(s)(2)(A) of the Act. The applicable HMO statutory provision is contained at section 1861(s)(2)(H)(ii) of the Act, which includes these services in the list of "medical and other health services."

Section 6113(b) of OBRA '89 amended section 1861(s)(2) of the Act by adding a new subparagraph (N) to include CSW services in the definition of medical and other health services generally covered under Part B of Medicare. It also amended section 1861(hh), which defines a CSW, to add a new subparagraph (hh)(2) to define "clinical social worker services" as services performed by a legally authorized CSW for the diagnosis and treatment of mental illnesses (other than services furnished to an inpatient of a hospital and other than services furnished to an inpatient of a skilled nursing facility (SNF) that the facility is required to provide as a requirement for participation) and that would be covered if furnished by a physician or as an incident to a physician's professional service. This provision is effective for services furnished on or after July 1, 1990.

Section 6113(b)(3) of OBRA '89 amended section 1833 of the Act, "Payment of Benefits," by adding paragraph (a)(1)(F) to establish the payment basis for CSW services as 80 percent of the lesser of (1) the actual charge for the services or (2) 75 percent of the fee schedule amount for CP

services that are covered under section 1861(s)(2)(M) of the Act. This section of OBRA '89 also amends section 1833 of the Act by revising paragraph (p) to specify that Part B payment for CSW services (as defined in section 1861(hh)(2) of the Act) is made only on an assignment-related basis.

D. Payment in Certain Facilities

In accordance with section 1876(a)(6) of the Act, payment for services furnished to an enrollee of a risk-based HMO or CMP can only be made to the HMO or CMP. Thus, a CP or CSW who furnishes services in these settings may not bill Medicare directly for these services. Payment will continue to be made through the risk-based HMO or CMP under the appropriate payment methodology.

It should be noted, however, that the scope of services requirement for both cost and risk-based HMOs and CMPs is changed with the addition of CP and CSW services to the list of "medical and other health services" defined under section 1861(s) of the Act. The scope of services requirement for both cost and risk-based HMOs and CMPs is set forth in existing § 417.440(b) and includes all Part A and Part B services that are available to Medicare beneficiaries in the HMO's or CMP's geographic area. Therefore, both cost and risk contracting HMOs and CMPs must now furnish CP and CSW services as Medicare covered services. Note, however, that under section 1861(hh) of the Act, there is no coverage under Part B for services and supplies incident to a CSW's services. Coverage, however, is provided, under section 1861(s)(2)(H)(ii) of the Act, for services and supplies incident to a CSW's services if furnished in a risk-based HMO or CMP. Thus, services and supplies incident to a CSW's services are covered by Medicare only when furnished by risk-based HMOs and CMPs.

It should also be noted that, prior to the OBRA '89 amendment, Medicare permitted the services of CPs and CSWs furnished through risk-based HMOs and CMPs to be furnished without physician supervision. This permission has been extended, for covered CP and CSW services, to cost-based HMOs and CMPs.

CORFs could bill for CP services furnished through December 31, 1990. However, effective January 1, 1991, a separate claim must be submitted under Part B for services of a CP in a CORF furnished to CORF patients. This is because, as of January 1, 1991, services of CPs are not included in the scope of CORF services described under section 1861(cc)(1) of the Act. In that section, the law states that CORF services do not

include any item or service that is not included under section 1861(b) of the Act if furnished to an inpatient of a hospital. As noted above, section 1861(b), which contains the statutory definition of "inpatient hospital services," as amended by section 4157(a) of OBRA '90, provides that inpatient hospital services means " * * * items and services furnished to an inpatient of a hospital * * * by the hospital * * * excluding, however— * * * qualified psychologist services * * *." As a result, a separate claim must also be submitted under Part B for CP services to hospital inpatients. The same policy applies to CORFs under section 1861(cc)(1) of the Act, as noted, to SNFs under section 1861(h)(7) of the Act, and to HHAs under the language following paragraph (m)(7) of section 1861 of the Act.

Note also that, in accordance with section 1881(b) of the Act, § 405.2163(c), which governs services required for outpatient maintenance dialysis patients furnished in end stage renal disease (ESRD) facilities, includes the services of social workers. Payment for social worker services is included in the composite rate payment made to the dialysis facility. Therefore, when a CSW furnishes social services as required under § 405.2163(c), these services are billed by the ESRD facility, and these services are paid for by Medicare as part of the composite rate. The composite rate, a payment rate provided for under section 1881(b) of the Act, is a comprehensive, all inclusive, prospective payment for all of the items and services required for outpatient maintenance dialysis.

Section 1861(aa) of the Act includes the services of CPs and CSWs in the services of a Federally qualified health center. Payment for these services is addressed in 42 CFR 405.2462 through 405.2468.

Payment for the services of CPs and CSWs furnished in rural health clinics will be addressed in a separate proposed rule.

II. Proposed Provisions of the Regulations

A. Clinical Psychologist Services

1. Inclusion as Medical and Other Health Services

We propose to revise § 410.10, "Medical and other health services: Included services," by adding a new paragraph (u) to include in the list of medical and other health services covered under Part B the diagnostic and therapeutic services furnished by a CP and services and supplies furnished as an incident to a CP's services. This is

consistent with section 1861(s)(2)(M) of the Act, which includes these services as medical and other health services, and section 1861(ii) of the Act, which defines qualified psychologist services.

2. Covered Services

We propose, in a new § 410.71, that Medicare Part B cover (subject to the 62½ percent limitation for certain outpatient mental health treatment services) services that are furnished by a CP who meets the Medicare requirements discussed below and that are within the scope of his or her State license if the services would be covered if furnished by a physician or as an incident to a physician's services. This policy is based on the definition of qualified psychologist services in section 1861(ii) of the Act. There are a number of issues involved in this proposed provision, which we discuss below.

- In a new § 410.71(b), we would specify, based on the limitation set forth in section 1833(c) of the Act, that the outpatient mental health treatment services of CPs and services and supplies furnished as an incident to those services are subject to the 62½ percent payment limitation set forth in proposed § 410.155.

- In a new § 410.71(d), we would specify that payment for the services of CPs and incident—to services to hospital inpatients and outpatients through December 31, 1990, is made to the hospital. The practice of covering services furnished to hospital patients by an outside supplier as hospital services is referred to as "rebundling" or "bundling." Under the "rebundling" requirement, the services of a CP and incident—to services furnished to a hospital patient were considered to have been built into the hospital payment methodology, and payment was made to the hospital.

While § 411.15(m) of the regulations provides the basic rules for services provided by nonphysicians to hospital inpatients, there is no specific regulation that sets forth the basic rules for services provided by nonphysicians to hospital outpatients. (However, a notice of proposed rulemaking was published in the *Federal Register* on August 5, 1988, (53 FR 29486) that discusses the issue of rebundling of services furnished to hospital outpatients.)

As mentioned earlier, section 4157(a) of OBRA '90 amended section 1862(a) of the Act, which concerns exclusions from coverage, by revising paragraph (14) to permit direct billing by CPs for qualified psychologist services and for services and supplies furnished as an

incident to their services to hospital patients. Thus, the policy regarding the bundling of CP services provided to hospital patients has been changed. Effective January 1, 1991, CPs may bill Medicare Part B directly for their services to hospital patients.

• Section 1861(ii) of the Act does not define "clinical psychologist" but looks to the Secretary to do so. Current Medicare regulations related to HMOs and CMPs at § 417.416(d)(2) define a clinical psychologist as an individual who—

+ Holds a doctoral degree in psychology from a program in clinical psychology of an educational institution that is accredited by an organization recognized by the Council on Post-Secondary Accreditation;

+ Is licensed or certified at the independent practice level of psychology in the State in which he or she practices; and

+ Possesses 2 years of supervised clinical experience at least one of which is postdegree.

The definition at § 417.416(d)(2) has been used for purposes of coverage of CP services in HMOs and was issued in final regulations on January 10, 1985. Application of this definition in the CMHC setting was addressed through instructions issued in September 1988, and, for purposes of the expanded CP benefit, instructions were issued in August 1990.

There has been extensive concern that the education criterion (that is, that in order to have his or her services covered by Medicare, a psychologist must have a doctoral degree from "a program in clinical psychology") excludes psychologists who have been trained and licensed as "clinical" psychologists from receiving payment under Medicare because they have graduated from programs that are not identified as "clinical" by the academic institutions that grant the degrees. While we were not aware of any particular problems in this regard before the enactment of section 6113(a) of OBRA '89 and issuance of the CP instructions in August 1990, questions have arisen since that time.

Specifically, it is alleged that the current definition is too narrow in that it excludes many qualified practitioners of psychology whose doctoral degrees are not in "clinical psychology" but who have analogous training and practical experience in other branches of psychology. Thus, professional organizations, such as the American Psychological Association and various State psychological associations, as well as individual practitioners, members of the Congress, and beneficiaries have

repeatedly requested that we undertake to ensure that coverage is available for the services of psychologists qualified to practice "clinical psychology," regardless of how their doctorate degrees are labeled.

As an interim measure, pending resolution of the issue through rulemaking, we informed the Medicare Part B carriers that they could use their discretion to include in the CP definition those psychologists who have appropriate training, knowledge, and experience in clinical psychology, even if their doctorates are from programs titled other than "Clinical Psychology." Based on the information available to us, about two-thirds of the carriers have adopted criteria in this regard similar to that which we are proposing in this rule.

There are many subfields in psychology within which one may obtain doctoral degrees. For example, in addition to Clinical and Counseling doctorates, there are also Neuropsychology, School, Developmental, Educational, Comparative, Experimental, and Industrial Psychology doctorates, among others, that may be received from various educational institutions. While it is not our intent to exclude from Medicare coverage the services of psychologists who are trained to practice "clinical psychology" simply because the programs that granted their degrees were not labeled as "clinical psychology programs," we must adhere to the statutory language as it appears in section 1861(ii) of the Act: "The term 'qualified psychologist services' means * * * services * * * furnished by a clinical psychologist (as defined by the Secretary) * * *." Thus, our task is to develop a definition of "clinical psychologist" that conforms to congressional intent and one that will not arbitrarily exclude those psychologists who have received education and training that is, in fact, indistinguishable from that received in a "Clinical Psychology" program.

We believe that, by using the term "clinical psychologist," the Congress was referring to persons educated and trained to furnish diagnostic testing and assessment services and preventive or therapeutic intervention services directly to individuals whose mental growth, adjustment, or functioning is impaired or is at risk of impairment.

The word "clinical" is defined in "Dorland's Medical Dictionary" as "pertaining to or founded on actual observation and treatment of patients, as distinguished from theoretical or experimental." Hence, we believe that persons who obtain doctorates from

programs that provide such education and training, whether they be labeled as "Clinical Psychology" programs or not, should be able to qualify for Medicare coverage. Thus, we propose, in new § 410.71(e)(1), that a clinical psychologist is an individual who—

+ Holds a doctoral degree in psychology from an accredited program that prepares the candidate to practice clinical psychology by providing appropriate clinical psychology training;

+ Is licensed or certified at the independent practice level of clinical psychology by the State in which he or she practices; and

+ Possesses 2 years of supervised clinical experience, at least one of which is post-doctoral degree experience, and the supervision was provided by a psychologist qualified at the doctorate level.

We understand that the various States, in enforcing licensing and certification statutes, may employ concepts of what constitutes clinical psychology that are different from what we propose. Therefore, we specifically invite comments concerning this issue. The underlying premise of these proposals is that the program must provide education and training that prepares an individual for the practice of clinical psychology.

In making these proposals, we are trying to ensure the quality of services that the Congress intended for Medicare beneficiaries seeking psychological help yet not unduly restrict the professionals considered qualified under the statute to provide that care. We nonetheless realize that there may still be some psychologists with essentially equivalent education and training who would not qualify even under this broad definition and that there may be other approaches worthy of consideration. One solution we considered was to state as the sole criterion that, in order to qualify, a person must have a doctoral degree in psychology. However, given the fact that the statute uses the term "clinical psychologist" and that the various subfields of psychology recognize doctorates that are not clinical in nature, we believe that the standard must reference the clinical psychology criterion. While we do not know for certain what each individual State's standards are for practice in clinical psychology, we would want to avoid situations in which, for example, persons with education and training solely in industrial or experimental psychology could be billing Medicare for clinical psychology services. Additionally, as we understand congressional intent, services furnished

in theoretical or academic settings, as distinguished from therapeutic work directly with patients, would not qualify as clinical psychology services. However, in preparing the final rule, we will be willing to consider variations of this basic approach or other responsible approaches that commenters may suggest.

The requirements for licensing or certification and supervised clinical experience in § 410.71(e)(1) would be the same as those established in 1985 in the HMO regulations at § 417.416(d)(2), except for the broader interpretation of what constitutes a degree from a "program in clinical psychology."

To ensure consistency, we are also proposing to revise the HMO rules at § 417.416(d)(2) to cross-refer to this definition.

Finally, it is apparently not unusual for a person to obtain a doctorate in one field of psychology and then later return to academia for a doctorate in another field of psychology. We understand, for example, that the American Psychological Association (APA) has set standards for training programs for persons wishing to change fields.

In establishing criteria for qualification as a clinical psychologist, we believe that appropriate retraining as a clinical psychologist of a psychologist originally trained in another field should be able to qualify for Medicare coverage purposes. However, we are not able to set specific standards for retraining programs and do not know whether there are standards other than those established by the APA.

Therefore, we request public comment on this issue and ask that any suggested standards comply with our position concerning clinical psychology, as outlined above, and that the retraining program prepare the candidate to practice clinical psychology.

• We are proposing, in § 410.71(e)(2), that, when applying for a provider number and annually thereafter, CPs who bill Medicare Part B directly must submit an attestation statement agreeing to consult with the beneficiary's attending or primary care physician in accordance with accepted professional ethical norms, taking into consideration patient confidentiality. Section 6113(c) of OBRA '89 directs that—

The Secretary of Health and Human Services shall, taking into consideration concerns for patient confidentiality, develop criteria with respect to payment for qualified psychologist services for which payment may be made directly to the psychologist under part B of title XVIII of the Social Security Act under which such a psychologist must agree to consult with a patient's attending physician in accordance with such criteria.

We believe that an attestation statement is a practical way to document the existence of an agreement between the CP and HCFA, to which the Secretary has delegated the administration of this provision.

The intended purpose of the consultation is to consider whether medical conditions or medication may be contributing to or causing the mental health problem. In the report of the House Budget Committee on H.R. 3299 (H.R. Rep. No. 247, 101st Cong., 1st Sess. 361 (1989)), the Energy and Commerce Committee expressed particular concern in the case of elderly patients, many of whom have multiple health problems and are taking one or more prescription drugs. We share this concern, and we believe that, to promote detection of causative or contributing factors, it is appropriate and good professional practice for CPs to consult with the beneficiary's attending or primary care physician.

It is important to note that section 6113(c) of OBRA '89 requires that the Secretary establish criteria under which payment may be made directly to the CP under Medicare Part B. These criteria must address the circumstances under which the CP will consult with the physician. The provision became effective on July 1, 1990. However, as discussed above, from the time this OBRA provision became effective, through December 31, 1990, CP services to hospital patients (inpatients and outpatients) were "bundled," and payment for inpatient services was made under Part A. Therefore, because CPs could not bill Medicare Part B directly for services to hospital patients and payment for such services was made to the hospital, the consultation provision was not applied to CPs furnishing services in the hospital setting.

However, enactment of section 4157(a) of OBRA '90 changed the situation because it excluded CP services from the definition of inpatient hospital services. Thus, under section 4157(c) of OBRA '90, effective January 1, 1991, CP services are "unbundled," and CPs can now bill Medicare Part B directly for such services.

We believe that the original congressional intent regarding the consultation requirement should be maintained for CP services furnished to hospital patients. Therefore, the proposed consultation requirement would apply to CPs who furnish services to hospital patients and bill Medicare Part B directly for such services.

The terms primary care physician and attending physician are used

alternatively because there are situations where a patient may be under the care of a primary care physician only, or treated by the primary care physician and the attending physician concurrently, or the attending physician may also be the patient's primary care physician. While most Medicare patients are at least under the care of a primary care physician such as an internist or gynecologist for routine care, there are occasions that arise where a patient's medical condition requires more specialized treatment. In such cases, it is usually the primary care physician who refers the patient to an attending physician (for example, a surgeon or an oncologist) for such treatment. When these situations exist, it may be important for the CP to consult equally with both physicians to be fully aware of all the potential medical conditions or medications that may interfere with treatment for the patient's mental illness. However, we would specify, as a minimum requirement, that the consultation must be with one or the other.

In recognition of the beneficiary's right to confidentiality, we are proposing, in § 410.71(e)(2)(i), that the CP must agree to inform the beneficiary, prior to a consultation, that it is desirable to consult with the beneficiary's primary care or attending physician to consider any medical conditions that may be contributing to the beneficiary's condition. We would require, in § 410.71(e)(2)(iii), that if the beneficiary assents, the CP must agree to consult with the physician within 1 week of obtaining the beneficiary's consent. We believe this is a reasonable period of time, and we understand that this is the professional standard that would apply routinely in such circumstances. However, we specifically invite public comment on this subject.

In § 410.71(e)(2)(ii), we propose that the annual attestation contain an agreement to include a notation in the beneficiary's medical records to the effect that he or she was notified of the desirability of a consultation between the CP and the beneficiary's primary care or attending physician, and the patient's response to the notification. We believe this would be a suitable means of documenting that the CP has complied with the consultation agreement. With respect to the frequency of the required attestation, we believe that it would be appropriate to update such attestations on an annual basis. (One precedent occurs, for example, at § 412.46 where we require physician attestations for inpatient hospital medical review requirements to be updated annually). However, we are

interested in receiving public comment about this matter.

We propose, in § 410.71(e)(2)(iii), that in the attestation statement the CP agree that, if he or she is unable to reach the physician after at least four attempts, he or she will notify the physician in writing about the provision of care to the beneficiary. We specifically invite comments concerning this matter as well.

3. Incidental Services

In § 410.71(a)(2), we would specify that Medicare Part B would cover services and supplies furnished as an incident to a CP's services if the incidental services and supplies would be covered if furnished by a physician or as an incident to a physician's services. This is consistent with the definition of "qualified psychologist services" in section 1861(ii) of the Act.

We also propose that, in order for services and supplies furnished incident to the services of the CP to be covered by Medicare, they must meet the longstanding Medicare requirements that are applicable to services furnished as an incident to the professional services of a physician. The requirements are that the services must be—

- The type that are commonly furnished in a physician's or CP's office and are either furnished without charge or are included in the CP's bill;
- An integral, although incidental, part of professional services performed by the CP;
- Performed under the direct supervision of the CP (that is, the CP must be physically present and immediately available); and
- Performed by an employee of either the CP or the legal entity that employs the supervising CP under the common law control test of section 210(j) of the Act (42 U.S.C. 410(j)), as more fully set forth in 20 CFR 404.1007.

4. Consultation

In discussing the consultation between the CP and the patient's physician, the report of the House Ways and Means Committee stated that "The Committee intends that such consult would not be a billable service." (H. R. Report No. 247, 101st Cong., 1st Sess. 1015). We think such consultation is an inherent and incidental component of the services the psychologist provides to the beneficiary and should not constitute a separate and distinct service. Therefore, we are proposing, in § 410.71(c), that consultation between the CP and the beneficiary's primary care or attending physician would not be a separately-billable service for

Medicare payment purposes. The primary care or attending physician also would not be permitted to bill Medicare for this consultation.

5. Payment on an Assignment-Related Basis

We propose to revise § 410.150, "To whom payment is made," by adding a new paragraph (b)(14) to specify that payment is made directly to the CP on an assignment-related basis for CP services furnished by him or her and for services and supplies furnished as an incident to his or her services. This is consistent with section 1833(p) of the Act, which requires payment for such services be made only on an assignment-related basis, and section 1861(ii) of the Act, which defines qualified clinical psychologist services.

Note that the assignment requirement would not preclude a CP from furnishing his or her services as an incident to the services of another health care practitioner if these services meet all of the incident-to requirements. In such a case, the practitioner may bill Medicare for the incident-to services. In this case, payment would be made by Medicare to the practitioner. (This is consistent with long-standing Medicare policy governing coverage of services furnished as an incident to the services of physicians or other health care professionals.)

6. Limitation on Mental Health Treatment Services

We propose, in accordance with the limitation in section 1833(c) of the Act, to revise § 410.152(a)(1)(iv), which concerns amounts of payment, to remove the annual dollar limitation on covered mental health treatment services as a factor in determining incurred expenses. (Incurred expenses are Part B covered expenses incurred by an individual during his or her coverage period.) We have revised this section by removing the specifics regarding the limitation amount and cross-referencing the limitation described in § 410.155.

7. Payment Amount

We propose to revise § 410.152, "Amounts of payment," by adding a new paragraph (l) to specify that Medicare Part B pays, subject to the mental health treatment limitation of § 410.155(c), 80 percent of the lesser of the actual charge or the fee schedule amount for CP services. This is based on the payment level established at section 1833(a)(1)(L) of the Act.

8. Definition of Mental Health Treatment

Section 1833(c) of the Act, as amended by section 6113(d) of Public Law 101-239, states that—

* * * with respect to expenses incurred in any calendar year in connection with the treatment of mental, psychoneurotic, and personality disorders of an individual who is not an inpatient of a hospital at the time such expenses are incurred, there shall be considered as incurred expenses * * * 62½ percent of such expenses * * *. (Emphasis added.)

In addition to precluding the application of the limitation to mental health treatment services furnished to hospital inpatients, this section of the law goes on to specify that, for purposes of this limitation, the term "treatment" does not include brief office visits to a physician for the sole purpose of monitoring or changing drug prescriptions used in the treatment of mental disorders or partial hospitalization services that are not directly provided by a physician. We propose to add a definition of "mental health treatment" to paragraph (a) of § 410.155, "Mental health treatment limitation." We would define "mental health treatment" as "therapy for the treatment of a mental, psychoneurotic, or personality disorder." We would also specify a distinction between "treatment" and "diagnosis," as discussed below.

We would also revise § 410.155(b) to include examples of services that are subject to, or excluded from, the application of the limitation.

• We would state that the limitation does not apply to mental health treatment furnished to hospital inpatients, brief office visits to a physician for the purpose of monitoring or changing drug prescriptions used in the mental health treatment, partial hospitalization services that are not directly provided by a physician, and diagnostic services that are performed to establish a diagnosis.

• We would state that the limitation will apply not only to mental health treatment furnished by physicians and CORFs but also to mental health treatment furnished as an incident to the services of a physician and to the mental health services of other health care practitioners whether the services are furnished directly by the practitioners or as an incident to their services. Thus, for example, the limitation would apply to the services of CPs, services furnished as an incident to the services of CPs, and to the services of CSWs.

With respect to diagnostic psychological testing and other

diagnostic services, we would provide that services performed in order to establish a patient's diagnosis are not subject to the limitation, because those services do not represent *treatment* of a mental disorder. Their purpose is to determine whether, in fact, the patient has a mental disorder and to identify the specific disorder. These diagnostic services must be completed *before* the patient's condition can be identified. Once the patient is determined to have a mental disorder, subsequent services to treat that disorder are subject to the limitation. Consequently, we believe that the limitation should apply to testing that is part of treatment (for example, when it is used to evaluate a patient's progress during treatment). Only diagnostic services used to establish a diagnosis for a patient's mental illness would be excluded from the limitation.

Section 6113(d) of Public Law 101-239 specifically eliminated the dollar limitation (formerly \$1,375.00) on mental health services, effective January 1, 1990. However, the 62½ percent limitation on expenses for such services remains unchanged. Consistent with the statute, we would revise § 410.155(c) of the regulations to remove the dollar limitation.

We would also revise the heading of § 410.155, from "Psychiatric services limitations: Expenses incurred for physician services and CORF services" to "Mental health treatment limitation." The example in existing paragraph (d) of how the limitation is applied would also be updated.

As a technical revision, we would remove the reference to "medical services for the diagnosis and treatment of tuberculosis" from the definition of "hospital" in § 410.155(a). Section 2335 of the Deficit Reduction Act of 1984 (Pub. L. 98-369) repealed the special conditions and requirements associated with coverage of treatment of tuberculosis patients and eliminated the special provider category of tuberculosis hospitals.

9. Bases for Payment

We propose, based on the payment provision at section 1833(a)(1)(L) of the Act, to revise § 424.55(b)(1), which concerns accepting assignment, to reflect that, in accepting assignment, a supplier (which includes a CP) agrees to accept, as the full charge for the service, the charge approved by the carrier as the basis for determining the Medicare Part B payment. We propose to revise paragraph (b)(2)(i) of this section, which currently reads: "To collect nothing for those services for which Medicare pays 100 percent of the reasonable charge."

We would change "reasonable charge" to "approved amount". This would reflect that, based on recent statutory changes, there are also fee schedules and other bases for payment, in addition to reasonable charge.

We would also revise paragraph (b)(2)(ii) of § 424.55. This paragraph currently limits the amount that the supplier may collect from the beneficiary or other source to only the amount of any unmet deductible, plus 20 percent of the difference between the reasonable charge and the unmet deductible for those services for which Medicare pays 80 percent of that difference. We would revise this to state that, for those services for which Medicare pays less than 100 percent of the approved amount, the supplier may collect only the difference between the Medicare approved amount and the Medicare Part B payment (that is, the amount of any reduction in incurred expenses under § 410.155(c) and any applicable deductible and coinsurance amount). This change would recognize that a supplier may collect, from the beneficiary or other source, the 37½ percent differential that results from the mental health treatment limitation.

B. Diagnostic Psychological Tests

Diagnostic psychological testing services performed by an independent psychologist other than a CP, which we describe at section 2070.2 of the Medicare Carriers Manual, practicing independently of an institution, agency, or physician's office are currently covered as other diagnostic tests under section 1861(s)(3) of the Act.

We believe that, by establishing section 1861(ii) of the Act, the Congress did not intend to preclude coverage of diagnostic psychological tests under section 1861(s)(3) of the Act and, therefore, we intend to continue to cover this type of testing. We are, however, inviting public comment at this time on methods to employ that will control the potential for excessive use of psychological testing.

In addition, we intend to address the coverage requirements for the psychological tests benefit in a separate rulemaking in the near future. At that time, we will invite public comment about the professional qualifications that should be required for the persons who perform these tests. Until the rule establishing these qualifications is effective, we intend to continue to cover this type of testing if furnished by any psychologist who is licensed or certified to practice psychology in the State or jurisdiction where he or she is furnishing services or, if the jurisdiction does not issue licenses, if provided by

any practicing psychologist. (It is our understanding that all States, the District of Columbia, and Puerto Rico license psychologists, but that some trust territories do not. Examples of psychologists, other than CPs, whose services would continue to be covered in the interim period include, but are not limited to, educational psychologists and counseling psychologists.)

Payment for psychological tests that are billed directly by these independent psychologists is no longer made on the basis of reasonable charges. Effective January 1, 1992, payment for psychological tests performed by these practitioners is made on the basis of the fee schedule for physicians' services. Hence, the payment amount for psychological tests (Current Procedural Terminology code 90830) is the same for physicians, clinical psychologists, and independent psychologists.

C. Clinical Social Worker Services

1. We propose, based on section 1861(s)(2)(N) of the Act, which includes the services of CSWs among medical and other health services, to add a new paragraph (v) to the list of medical and other health services at § 410.10 to include the services of CSWs.

2. We propose, in a new § 410.73(a), to define a CSW based on the definition of a CSW in section 1861(hh)(1) of the Act. We would define a CSW as an individual who—

- Possesses a master's or doctor's degree in social work;
- After obtaining the degree, has performed at least 2 years of supervised clinical social work; and
- Either is licensed or certified as a clinical social worker by the State in which the services are performed or, in the case of an individual in a State that does not provide for licensure or certification, has completed at least 2 years or 3,000 hours of post master's degree supervised clinical social work practice under the supervision of a master's degree level social worker in an appropriate setting such as a hospital, SNF, or clinic.

3. We propose, in a new § 410.73(b), to specify that Medicare Part B pays for services performed by a CSW for the diagnosis and treatment of mental illness that the CSW is legally authorized to perform if the services would be covered if furnished by a physician or as an incident to a physician's professional services. This is based on the definition of CSW services in section 1861(hh)(2) of the Act.

4. In a new § 410.73(c)(1), we would specify that payment for CSW services

furnished to hospital inpatients and outpatients is made to the hospital. All services provided by CSWs to hospital patients (inpatients and outpatients) are bundled under section 1862(a)(14) of the Act. Therefore, CSWs cannot bill Medicare Part B directly for these services.

Section 4157 of OBRA '90 did not amend section 1862(a)(14) of the Act, which concerns exclusion from coverage, to unbundle inpatient and outpatient hospital services provided by CSWs. This section specifically unbundles only the following services:

- Physician services.
- Certified nurse midwife services.
- Qualified psychologist services (that is, services of CPs).
- Certified registered nurse anesthetist services.
- Services described under section 1861(s)(2)(K)(i) of the Act; that is, physician assistant services.

Therefore, CSW services to hospital patients remain bundled, which means that CSWs are precluded from billing the Medicare program for these services directly.

In a new § 410.73(c)(2), we would specify that payment for CSW services furnished to inpatients of an SNF, if the SNF is required to provide such services as a requirement for participation, is made to the SNF. Section 6113(b) of Public Law 101-239 explicitly excludes from the definition of "clinical social worker services" services furnished to an inpatient of an SNF that the SNF is required to provide as a requirement for participation. However, under existing § 483.15, which concerns quality of life requirements for long term care facilities, SNFs are required to hire a qualified social worker to provide social services in facilities with more than 120 beds. These social workers need not meet the statutory definition for a CSW, because, as provided in § 483.15(g)(4), they may qualify with a bachelor's level training and experience.

Payment for all social worker services performed in an SNF, in accordance with § 483.15, is made directly to the SNF and billed as an SNF service. However, under the statute any coverable CSW services furnished in an SNF that the SNF is not required to furnish as a requirement for participation could be billed by the CSWs directly under Part B.

While it is true that SNFs furnish social services, we cannot say that these services are always (or even ever) performed by individuals with the credentials of CSWs, or that services furnished in an SNF by a social worker (including a CSW who is an SNF employee) are diagnostic and

therapeutic mental health services as envisioned in terms of CSW coverage. In studying the provision, we at first concluded that one practical approach would be to attempt to delineate types of services that could, and could not, be provided under Part B in an SNF setting. Thus, we considered proposing that—

- All generalized social worker services furnished to all SNF inpatients without individualization would be excluded from Part B coverage no matter who provides them.

- All identifiable CSW services furnished to individual patients in order to diagnose or treat the individual patient's mental illness would be covered under Part B if provided by a CSW.

However, this approach would be difficult to administer because both of these categories of services are difficult to identify and seem potentially to fall under the SNF requirements for participation. Therefore, carriers would not be able to distinguish, or limit in a clearly definable way, those services that are not required by the SNF requirements for participation. A clear distinction is needed, not only for Part A and Part B payment reasons, but also for SNF certification and survey purposes.

Furthermore, language in section 1819(b) of the Act that establishes required SNF services is somewhat imprecise, in that several major components of that subsection seem to entail the very type of work that CSWs might be expected to perform in an SNF, particularly, providing "specialized rehabilitative services" and "medically-related social services" in order "to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident." Section 1819(b)(4)(A)(v) of the Act requires SNFs to provide an ongoing program that furnishes these services and that is provided in accordance with an assessment made for each patient. On the face of it, services furnished to meet these requirements seem necessarily tailored to the individual. Hence, it is difficult to see how those functions could constitute "generalized" services furnished to all patients "without individualization."

Thus, we are inviting public comment and suggestions on how we can clearly identify or differentiate the level of services that would clearly qualify under the statute as CSW services performed in SNFs from those services that are required by the SNF requirements for participation.

As noted above, the conditions of coverage for ESRD facilities require that

social worker services be made available to dialysis patients. Concerning the issue of whether CSWs could be paid directly for social worker services furnished to dialysis patients that the dialysis facilities are required to furnish as a condition of coverage, the composite rate is a comprehensive, all inclusive, prospective payment for all of the items and services required for outpatient maintenance dialysis. Because payment for the CSW services will be included in the composite rate payment made to the dialysis facility, we do not believe that CSWs can be paid directly for these services furnished to dialysis patients. Therefore, in a new § 410.73(c)(3), we would specify that payment for social services furnished to dialysis patients that are required by the conditions for coverage for ESRD facilities is made to the ESRD facility. However, we invite public comment regarding whether any CSW services to dialysis patients can be distinguished from the required facility services.

5. We have the same concerns regarding the need for consultation between the CSW and the beneficiary's physician as we do in the case of CPs. We believe that it is important that the CSW take into consideration medical conditions that may be causing or contributing to the beneficiary's problems and that the best way to identify these conditions is through consultation with the beneficiary's primary care or attending physician. Based on language in the conference report that accompanied H.R. 3299, it is clear that the conference committee had the same concern. The conference agreement stated:

The conferees intend that the criteria developed by the Secretary stipulate that the patient's medical record include documentation that: (1) The psychologist or *clinical social worker* has informed the patient of the desirability of conferring with the patient's primary care physician to consider potential medical conditions contributing to the patient's condition * * * [Emphasis added.] (H.R. Rep. No. 247, 101st Cong., 1st Sess. 361 (1989))

Therefore, in a new § 410.73(d), we propose to hold those CSWs who bill Medicare Part B directly to the same consultation requirements as we would CPs. Accordingly, the CSW, when applying for a Medicare provider number and annually thereafter, would be required to submit to the carrier an attestation statement agreeing to consult with the beneficiary's attending or primary care physician in accordance with professional ethical norms, taking into consideration patient confidentiality. We would require that

the attestation statement contain the same information proposed for the attestation statement we would require of CPs.

We also propose to specify, in a new § 410.73(c)(5), that a CSW or attending or primary care physician may not bill Medicare or the beneficiary for the consultation that would be required by this rule.

6. We propose to revise § 410.150, which explains to whom payment is made, by adding a new paragraph (b)(16) to specify that payment may be made directly to the CSW, on an assignment-related basis, for services he or she furnished.

7. As discussed under section II.A. of this preamble, we would revise §§ 410.152, "Amounts of payment," and 410.155(b), "Services subject to limitation," regarding application of the mental health treatment limitation. The provisions of proposed §§ 410.152 and 410.155(b) would also apply to services of CSWs.

8. We propose, based on the payment provision of section 1833(a)(1)(F) of the Act, to further revise § 410.152 by adding a new paragraph (m), which would specify that Medicare Part B pays, subject to the mental health treatment limitation of § 410.155(c), 80 percent of the lesser of the actual charge for the therapeutic services of a CSW or 75 percent of the fee schedule amount for CP services, which will be described in a separate rule addressing the provisions of section 1833(a)(1)(L) of the Act.

9. Before OBRA '89, we permitted the covered services of CPs and CSWs furnished through risk-based HMOs and CMPs to be furnished without physician supervision. We would amend § 417.416, "Qualifying condition: Furnishing of services," by adding a new paragraph (d)(3) to specify that a cost-based HMO or CMP may permit the covered services of a CSW to be furnished without physician supervision. Because under section 1861(hh) of the Act there is no coverage under Part B for services and supplies incident to a CSW's services, we would clarify that services incident to the professional services of a CSW are not covered by Medicare if furnished in a cost-based HMO or CMP.

10. The proposed revision to § 424.55, "Payment to the supplier," discussed in section II.A.9 of this preamble, would also apply to CSWs.

D CPs and CSWs Diagnostic Coding

When CPs and CSWs submit claims to carriers for services furnished to Medicare beneficiaries, they may have been using diagnosis codes either from

the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) (DSM-III-R) or the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM). We are proposing that, beginning with the effective date of the final rule, CPs and CSWs would be required to use only ICD-9-CM diagnostic coding when submitting claims to our carriers. We have a long history of use of the ICD-9-CM coding system for reporting purposes for our Medicare beneficiaries. All of our hospital data are recorded using the ICD-9-CM coding system. Although DSM-III-R is based on ICD-9-CM, it is not compatible with our system software, and it would be costly to make it compatible. It would also be burdensome for physicians to be required to buy two sets of coding books.

In addition, note that section 1842(p) of the Act, as enacted by section 202(g) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360), requires that each request for payment, or bill submitted, for an item or service furnished by a physician for which payment may be made include the appropriate diagnosis code or codes established by the Secretary. In a proposed rule "Physician Billing Diagnostic Information," published on July 21, 1989, (54 FR 30558) we proposed to designate ICD-9-CM codes as the appropriate and sole diagnosis coding system for physicians' services. Further, section 1833(e) of the Act stipulates that no payment shall be made to any provider of services or other person under Part B unless the information necessary to determine the amounts due such provider or other person has been furnished. Thus, we believe that it would be appropriate to extend these requirements to CPs and CSWs.

III. Regulatory Impact Analysis

A. Introduction

We generally prepare and publish a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (U.S.C. 601 through 612) unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all psychologists, social workers, and hospitals to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an

analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We believe this proposed rule would not have a significant economic impact on a substantial number of small rural hospitals since it is unlikely that they would be involved in providing CP and CSW services, unless the facility is one providing services primarily for the mentally ill. We have prepared the following analysis, which in combination with the other sections of this proposed rule, is intended to conform to the objectives of the RFA and section 1102(b) of the Act.

To the extent that a legislative provision being announced by a rule such as this may have a significant effect on beneficiaries or providers or may be viewed as controversial, we believe that we should address any potential concerns. In this instance, we believe it is desirable to inform the public of our estimate of the substantial budgetary effect of these statutory changes.

It is the amendments to the Act as a result of sections 6113 (a) through (d) of OBRA '89 and section 4157(a) of OBRA '90 that would increase Medicare program expenditures, not these regulations, which merely conform to statutory provisions. The statutory elimination of the restriction on the site of service has increased the accessibility and availability of services, resulting in a significant increase in the number of services provided to Medicare beneficiaries. In addition, removal of the annual dollar limitation, which was effective on January 1, 1990, has also resulted in an increase in payment for mental health services provided by CPs and CSWs for Medicare patients whose cost of care may exceed what was the annual limitation of \$1,375.00. We project that the combination of additional sites of service, additional providers, and removal of the annual dollar limitation would result in the following estimated increase in expenditures:

ESTIMATED INCREASE IN MEDICARE EXPENDITURES FOR CLINICAL PSYCHOLOGIST AND CLINICAL SOCIAL WORKER SERVICES

[In millions, rounded to the nearest \$10 million]

FY 94	FY 95	FY 96	FY 97
\$260	\$320	\$390	\$430

The total expenditures are dependent upon the number of services and the charge per service of CPs and CSWs. We believe the increase in expenditures would be due primarily to an increase in the number of users rather than an increase in the average charge per service or the average number of services per beneficiary. We estimate the number of users would increase 10 percent each year due to additional providers, provider outreach, and an increasing number of beneficiaries.

It is also important to note that, in the absence of final regulations defining the criteria a CP must meet for Medicare purposes, the Medicare carriers have had the authority to determine whether a particular psychologist qualifies to have services covered by Medicare. In using this authority, the carriers decide if the educational background and experience of a particular psychologist qualify him or her as a CP. As noted earlier, we estimate that two-thirds of the carriers currently are paying psychologists based on the education and experience factors that would be adopted under this proposed rule. Therefore, the estimates presented above reflect amounts currently being paid for the services of psychologists, as approved by the carriers.

Another factor affecting these estimates is that, because of the availability of coverage of the service of CPs and CSWs, these professionals substitute for the services of psychiatrists. Thus, there is an offsetting effect in terms of program outlays.

B. Entities Affected

1. Effect on Clinical Psychologists

Under this proposed rule, CPs would be able to bill Medicare directly for all CP services, including those furnished to hospital patients. We anticipate an increase in services provided by CPs because there may have been a need for mental health care that was unmet because of limited access to CP and CSW services and also because demand may be stimulated when information concerning the availability of coverage for these services becomes more widely known.

2. Effect on Other Psychologists

These proposed regulations would continue to permit independent psychologists to bill the Medicare program directly for furnishing diagnostic psychological tests ordered by a physician or CP. Payment would be made under the fee schedule for physicians' services.

3. Effect on Clinical Social Workers

Clinical social workers were not previously able to bill directly for their services. Therefore, it is difficult to project accurately the number of CSWs who would elect to participate in the Medicare program and the number of beneficiaries who would be served. The services that are covered are those that are otherwise covered if furnished by a physician or as an incident to a physician's professional service. We believe the services provided by CSWs would be in addition to those previously furnished by psychiatrists and psychologists rather than a substitute for the service of medical doctors and CPs. The additional providers, and the willingness of the CSWs to participate in the Medicare program, would increase the access to care by persons in need of these services.

IV. Paperwork Reduction Act

Proposed regulations at §§ 410.71(e) and 410.73(e) contain information collection and recordkeeping requirements that are subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The information collection requirements concern the attestation statement from CPs and CSWs and the notation of medical records regarding consultation. The respondents who would provide the information are CPs and CSWs. Public reporting burden for this collection of information is estimated to be ½ hour per year per beneficiary receiving CP or CSW services. A notice will be published in the *Federal Register* after approval is obtained. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the OMB official whose name appears in the ADDRESSES section of this preamble.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. We will, however, consider all comments that we receive by the date specified in the DATES section of this preamble and, if we proceed with a final rule, we will respond to the comments in the preamble of the final rule.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays

42 CFR Part 417

Administrative practice and procedure, Health maintenance organization (HMO), Medicare, Reporting and recordkeeping requirements.

42 CFR Part 424

Assignment of benefits, Physician certification, Claims for payment, Emergency services, Plan of treatment.

For the reasons set forth in the preamble, 42 CFR chapter IV is proposed to be amended as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. Part 410 is amended as set forth below:

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

Authority: Secs. 1102, 1832, 1835, 1861 (r) (s), (cc), (hh), and (ii), 1862(a), 1871, 1876, and 1881 of the Social Security Act, and sec. 6113(c), Public Law 101-239 (42 U.S.C. 1302 1395k, 1395n, 1395x (r), (s), (cc), (hh), and (ii), 1395y(a), 1395hh, 1395mm, and 1395rr, and 1395i (note)).

Subpart B—Medical and Other Health Services

2. In § 410.10, the introductory text is republished, and new paragraphs (u) and (v) are added to read as follows:

§ 410.10 Medical and other health services: Included services.

Subject to the conditions and limitations specified in this subpart, "medical and other health services" includes the following services:

* * * * *

(u) Clinical psychologist services and services and supplies furnished as an incident to the services of the clinical psychologist, as provided in § 410.71.

(v) Clinical social worker services, as provided in § 410.73.

3. New §§ 410.71 and 410.73 are added to read as follows:

§ 410.71 Clinical psychologist services and services and supplies incident to clinical psychologist services.

(a) *Included services.* (1) Medicare Part B covers services furnished by a clinical psychologist, who meets the requirements specified in paragraph (e) of this section, that are within the scope of his or her State license, if the services would be covered if furnished by a

physician or as an incident to a physician's services.

(2) Medicare Part B covers services and supplies furnished as an incident to the services of a clinical psychologist if the following requirements are met:

(i) The services and supplies would be covered if furnished by a physician or as an incident to a physician's services.

(ii) The services or supplies are of the type that are commonly furnished in a physician's or clinical psychologist's office and are either furnished without charge or are included in the physician's or clinical psychologist's bill.

(iii) The services are an integral, although incidental, part of professional services performed by the clinical psychologist.

(iv) The services are performed under the direct supervision of the clinical psychologist (that is, the clinical psychologist must be physically present in the office suite and immediately available).

(v) The individual performing the service must be an employee of either the clinical psychologist or the legal entity that employs the supervising clinical psychologist, under the common law control test of the Act as more fully set forth in 20 CFR 404.1007.

(b) *Application of mental health treatment limitation.* The treatment services of a clinical psychologist and services and supplies furnished as an incident to those services are subject to the limitation on payment for outpatient mental health treatment services set forth in § 410.155.

(c) *Payment for consultations.* A clinical psychologist or an attending or primary care physician may not bill Medicare or the beneficiary for the consultation that is required under paragraph (e)(2) of this section.

(d) *Billing procedures.* Payment for the services of a clinical psychologist and for services furnished as an incident to a clinical psychologist's services that were furnished to hospital inpatients and outpatients through December 31, 1990, is made to the hospital. Effective January 1, 1991, clinical psychologists may bill Medicare Part B directly for these services.

(e) *Requirements for payment for services—(1) Qualifications.*—For purposes of this requirement, a clinical psychologist is an individual who meets the following requirements:

(i) Holds a doctoral degree in psychology from an accredited program that prepares the candidate to practice clinical psychology by providing appropriate clinical psychology training.

(ii) Is licensed or certified at the independent practice level of clinical psychology by the State in which he or she practices.

(iii) Possesses 2 years of supervised clinical experience, at least one of which is postdoctoral degree experience and the supervision was provided by a psychologist qualified at the doctorate level.

(2) *Agreement to consult.* When applying for a Medicare provider number, and annually thereafter, a clinical psychologist who bills Medicare Part B directly must submit to the carrier an attestation statement agreeing to consult with the beneficiary's attending or primary care physician (providing the beneficiary has such a physician) in accordance with accepted professional ethical norms, taking into consideration patient confidentiality. The attestation must specify that the clinical psychologist agrees to the following:

(i) To inform the beneficiary, before a consultation, that it is desirable to consult with the beneficiary's primary care or attending physician to consider relevant medical conditions.

(ii) To include a notation in the beneficiary's medical records that he or she was notified of the desirability of a consultation between the clinical psychologist and the primary care or attending physician, and the beneficiary's response to that notification.

(iii) If the beneficiary assents to the consultation, to consult with the primary care or attending physician within 1 week of obtaining the beneficiary's consent. In addition, the clinical psychologist must agree to notify the physician in writing about the provision of care to the beneficiary if, after at least four attempts, he or she is unable to consult directly with the physician.

§ 410.73 Clinical social worker services.

(a) *Definition.* For purposes of this part, a clinical social worker is defined as an individual who—

(1) Possesses a master's or doctor's degree in social work;

(2) After obtaining the degree, has performed at least 2 years of supervised clinical social work; and

(3) Either is licensed or certified as a clinical social worker by the State in which the services are performed or, in the case of an individual in a State that does not provide for licensure or certification, has completed at least 2 years or 3,000 hours of post master's degree supervised clinical social work practice under the supervision of a master's degree level social worker in an

appropriate setting such as a hospital, SNF, or clinic.

(b) *Included services.* Medicare Part B covers the services of a clinical social worker furnished for the diagnosis and treatment of mental illness that the clinical social worker is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) of the State in which the services are performed. The services must be of a type that would be covered if they were furnished by a physician or as an incident to a physician's professional service and must meet the requirements of this section.

(c) *Billing and payment for certain services.* (1) Payment for covered clinical social worker services furnished to hospital inpatients and outpatients is made to the hospital.

(2) Payment for covered clinical social worker services furnished to inpatients of an SNF, if the SNF is required to provide the services as a requirement for participation, is made to the SNF.

(3) Payment for social services furnished to dialysis patients that are required by the conditions for coverage for ESRD facilities under § 405.2163 of this chapter is made to the ESRD facility.

(4) A clinical social worker may not bill Medicare for the services specified in paragraphs (c)(1) through (c)(3) of this section.

(5) A clinical social worker or an attending or primary care physician may not bill Medicare or the beneficiary for the consultation that is required under paragraph (d) of this section.

(d) *Requirements for Medicare payment: Agreement to consult.* As a requirement for Medicare payment, when applying for a Medicare provider number, and annually thereafter, a clinical social worker who bills Medicare Part B directly must submit to the carrier an attestation statement agreeing to consult with the beneficiary's attending or primary care physician (providing the beneficiary has such a physician) in accordance with accepted professional ethical norms, taking into consideration patient confidentiality. The attestation must specify that the clinical social worker agrees to the following:

(1) To inform the beneficiary, before a consultation, that it is desirable to consult with the beneficiary's primary care or attending physician to consider medical conditions contributing to the beneficiary's condition.

(2) To include a notation in the beneficiary's medical records that he or she was notified of the desirability of a consultation between the clinical social

worker and the primary care or attending physician, and the beneficiary's response to the notification.

(3) If the beneficiary assents to the consultation, to consult with the primary care or attending physician within 1 week of obtaining the beneficiary's consent. In addition, the clinical social worker must agree to notify the physician in writing about the provision of care to the beneficiary if, after at least four attempts, he or she is unable to consult directly with the physician.

Subpart E—Payment of SMI Benefits

4. In § 410.150, the introductory text of paragraph (b) is republished, new paragraphs (b)(12) through (b)(14) are added and reserved, and new paragraphs (b)(15) and (b)(16) are added to read as follows:

§ 410.150 To whom payment is made.

(b) *Specific rules.* Subject to the conditions set forth in paragraph (a) of this section, Medicare Part B pays as follows:

- (12) [Reserved.]
- (13) [Reserved.]
- (14) [Reserved.]

(15) To a clinical psychologist on the individual's behalf for clinical psychologist services and for services and supplies furnished as an incident to his or her services.

(16) To a clinical social worker on the individual's behalf for clinical social worker services.

5. In § 410.152, the title of paragraph (a) is revised, the introductory text of paragraph (a)(1) is republished; paragraph (a)(1)(iv) and the introductory text for paragraphs (a)(2) and (b) are revised; new paragraph (k) is added and reserved; and new paragraphs (l) and (m) are added to read as follows:

§ 410.152 Amounts of payment.

(a) *General provisions—(1) Exclusion from incurred expenses.* As used in this section, "incurred expenses" are expenses incurred by an individual during his or her coverage period, for covered Part B services, excluding the following:

(iv) Expenses for mental health treatment services in excess of the mental health treatment limitation described in § 410.155.

(2) *Other applicable provisions.* Medicare Part B pays for incurred expenses the amounts specified in

paragraphs (b) through (m) of this section, subject to the following:

(b) *Basic rules for payment.* Except as specified in paragraphs (c) through (m) of this section, Medicare Part B pays the following amounts:

(k) [Reserved.]
 (l) *Amount of payment: Clinical psychologist services.* Medicare Part B pays 80 percent, subject to the limitation of § 410.155(c), of the lesser of the actual charge or the fee schedule amount for clinical psychologist services.

(m) *Amount of payment: Clinical social worker services.* Medicare Part B pays 80 percent, subject to the limitation of § 410.155(c), of the lesser of the actual charge for the services of a clinical social worker or 75 percent of the fee schedule amount for clinical psychologist services.

6. In § 410.155, the section heading is revised; in paragraph (a), the semicolon and the phrase "and medical services for the diagnosis and treatment of tuberculosis" is removed from the end of the definition of *hospital*, and a definition of *mental health treatment* is added at the end of the paragraph; and paragraphs (b), (c)(1), and (d) are revised to read as follows:

§ 410.155 Mental health treatment limitation.

(a) * * * "*Mental health treatment*" means therapy for the treatment of a mental, psychoneurotic, or personality disorder.

(b) *Application of the limitation.* (1) Services subject to the limitation include the following:

(i) Mental health treatment by physicians and other health care practitioners, whether furnished directly or as an incident to the services of the physician or other health care practitioner.

(ii) CORF mental health treatment furnished by physicians or other health care practitioners.

(2) Services not subject to the limitation include the following:

(i) Services furnished to a hospital inpatient.

(ii) Brief office visits for the purpose of monitoring or changing drug prescriptions used in the mental health treatment.

(iii) Partial hospitalization services not directly provided by a physician.

(iv) Diagnostic services, such as psychological testing, that are performed to establish a diagnosis.

(c) *Limitation—(1) Current limit.* Of the expenses incurred for services subject to the limit as specified in

paragraph (b) of this section, only 62½ percent of the expenses will be considered payable under Medicare Part B, subject to the amount of payment and deductible provisions set forth in §§ 410.152 and 410.160, respectively.

(d) *Examples—(1)* As a private patient, whose physician accepted assignment, Mr. X's only medical expenses during calendar year 1991 were for physicians' services in connection with the treatment of a mental disorder that did not require inpatient hospitalization. The physician submitted a claim for \$780, and the Medicare approved amount was determined to be \$750. The statutory limit on the amount of expenses that are covered is 62½ percent of such expenses. (Here, \$468.75 represents 62½ percent of \$750.) Mr. X is required to meet the first \$100 of total covered expenses for the Medicare Part B deductible, 20 percent of the balance of total covered expenses (20 percent of \$368.75), and the difference between the Medicare approved amount and the total covered expenses (\$750 minus \$468.75). The remaining 80 percent is payable under Medicare Part B.

Total covered expenses	Mr. X's Payment	Medicare payment
\$468.75	\$281.25	
¹ - 100.00	¹ 100.00	
\$368.75	³ 73.75	⁴ \$295.00
	⁵ \$455.00	

¹ Deductible, as described in § 410.160.
² In excess of \$468.75.
³ 20 percent of total covered expenses less deductible.
⁴ 80 percent of total covered expenses less deductible.
⁵ Total payments by Mr. X.

(2) If Mr. X's physician had not accepted assignment, Mr. X would also have been liable for the difference between the actual charge of \$780 and the approved amount of \$750; that is, for an additional \$30.

(3) If Mr. X had incurred \$350 of the above expenses while an inpatient of a hospital (see paragraph (b) of this section), and the remaining \$400 while not an inpatient of a hospital, payment would be computed as follows:

Total covered expenses	Mr. X's payment	Medicare payment
¹ \$250.00	² \$150.00	
³ + 350.00		

Total covered expenses	Mr. X's payment	Medicare payment
\$600.00 4 - 100.00	4 \$100.00	e \$400.00
\$500.00	5 \$100.00	
	7 \$350.00	

¹ 62½ percent of \$400.
² In excess of 62½ percent of \$400.
³ 100 percent of expenses incurred while an inpatient.
⁴ Deductible.
⁵ 20 percent of total covered expenses less deductible.
⁶ 80 percent of total covered expenses less deductible.
⁷ Total payments by Mr. X.

(4) In 1991, a clinical psychologist submits a claim for \$100 for a covered mental health treatment service. The approved amount is \$80. The "payment amount" is the lesser of \$100 and \$80, or \$80. The beneficiary previously satisfied \$70 of his annual Part B deductible of \$100, leaving \$30 unsatisfied. The actual benefit amount is computed as follows:

- \$80 × .625 = \$50
- \$50 - \$30 = \$20
- \$20 × .80 = \$16 (the actual benefit payable).

Since the clinical psychologist must accept assignment, the beneficiary is liable for \$80 - \$16 = \$64. If the deductible had previously been satisfied, the actual benefit payable would have been \$40 (\$50 × .80) and the beneficiary would have been liable for \$80 - \$40 = \$40.

B. Part 417 is amended as follows:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1961(s)(2)(H), 1866(a), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 1395(a)(1)(A), 1395x(s)(2)(H), 1395cc(a), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97-248 (42 U.S.C. 1395mm note); 31 U.S.C. 9701; and secs. 215 and 1301 through 1318 of the Public Health Service Act (42 U.S.C. 216 and 300e through 300e-17), unless otherwise noted.

Subpart J—Qualifying Conditions for Medicare Contracts

2. In § 417.416, the introductory text of paragraph (d) is republished; paragraph (d)(2) is revised; and a new paragraph (d)(3) is added to read as follows:

§ 417.416 Qualifying condition: Furnishing of services.

(d) *Exceptions to physician supervision.* The following services may be furnished without the direct personal supervision of a physician:

(2) The organization may permit the services of clinical psychologists who meet the qualifications specified in § 410.71(e)(1) of this chapter, and the services and supplies incident to their professional services, to be furnished without the direct personal supervision of a physician.

(3) An organization that contracts on—
 (i) A risk basis may permit the services of a clinical social worker (as defined at § 410.73 of this chapter) and the services and supplies incident to their professional services, to be furnished without physician supervision; or

(ii) A cost basis may permit the services of a clinical social worker (as defined in § 410.73 of this chapter) to be furnished without physician supervision. Services incident to the professional services of a clinical social worker furnished by an organization contracting on a cost basis are not covered by Medicare and payment will not be made for such services.

C. Part 424 is amended as follows:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for part 424 is revised to read as follows:

Authority: Secs. 216(j), 1107, 1814, 1815(c), 1833, 1835, 1842(b), 1861, 1866(d), 1870 (e) and (f), 1871, and 1872 of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395(i), 1395(n), 1395u(B), 1395x, 1395cc(d), 1395gg (e) and (f), 1395hh, and 1395ii).

2. In § 424.55(b), the introductory text is republished, and paragraphs (b)(1) and (b)(2) are revised to read as follows:

§ 424.55 Payment to the supplier.

(b) In accepting assignment, the supplier agrees to the following:

(1) To accept, as full charge for the service, the amount approved by the carrier as the basis for determining the Medicare Part B payment (the reasonable charge or the lesser of the fee schedule amount and the actual charge).

(2) To limit charges to the beneficiary or any other source as follows:

(i) To collect nothing for those services for which Medicare pays 100 percent of the Medicare approved amount.

(ii) To collect only the difference between the Medicare approved amount and the Medicare Part B payment (for example, the amount of any reduction in incurred expenses under § 410.155(c), any applicable deductible amount, and any applicable coinsurance amount) for services for which Medicare pays less than 100 percent of the approved amount.

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

Dated: July 19, 1993.
 Bruce C. Vladeck,
 Administrator, Health Care Financing Administration.

Dated: August 30, 1993.
 Donna E. Shalala,
 Secretary.
 [FR Doc. 93-31552 Filed 12-28-93; 8:45 am]
 BILLING CODE 4120-01-P

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 93-24]

Amendment to Rules of Practice and Procedure

AGENCY: Federal Maritime Commission.
ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission proposes to amend its Rules of Practice and Procedure to make the complainant in a private complaint action responsible for service of the complaint and certain other documents in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure, when the Commission has been unsuccessful, for any reason, in effectuating service by certified or registered mail. The proposed rule would also require complainant, when it effectuates service of a complaint, to notify the Commission of the date and manner of service, and the respondent of the time in which it must answer the complaint. Similar amendments are proposed for the Commission's Rules governing small claims. The proposed rule would conform the Commission's Rules regarding service more closely to the Federal Rules of Civil Procedure.

DATES: Comments due February 14, 1994.

ADDRESSES: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001.

FOR FURTHER INFORMATION CONTACT:

Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001 (202) 523-5725.

SUPPLEMENTARY INFORMATION: Under Rule 113 of its Rules of Practice and Procedure, 46 CFR 502.113, the Commission is presently charged with the responsibility for service of private complaints, amendments to complaints, and complainant's memoranda filed in shortened procedure cases, while section Rule 114, 46 CFR 502.114 requires that parties serve all other pleadings. In administering Rule 113, the Commission has experienced occasions where complaints and other pleadings have been returned by the United States Postal Service because the respondent refused delivery, an incorrect address was provided by the complainant, or the respondent had moved leaving no forwarding address. In such circumstances, the Commission has resorted to alternative methods of service such as utilizing a Commission investigator to personally find and serve the respondent, or serving the secretary of state pursuant to state law.

Section 11(b) of the Shipping Act of 1984, 46 U.S.C. app. 1710(b), requires the Commission to "furnish a copy" of a private complaint to the named respondent, but this would not appear to require the Commission to expend its own resources on behalf of a private complainant beyond an initial service by certified or registered mail. Accordingly, the Commission proposes to amend Rule 113 to shift the responsibility of service to the complainant when the Commission has been unsuccessful in effectuating service by certified or registered mail. In that event, it would be left to the complainant to effectuate service in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure, including, but not limited to, delivering a copy of the complaint personally to the respondent or to an agent authorized by appointment or by law to receive service of process.

The proposed rule would also require the complainant, if required to effectuate service, to notify the Commission's Secretary of the date and manner of service, and to notify the respondent of the time prescribed by Rule 64 of the Commission's Rules of Practice and Procedure, 46 CFR 502.64, within which the respondent must answer the complaint. A new form—Notice of Complaint Filed—would be added to Exhibit 1, Subpart E of Part 502, Complaint Form and Information Checklist, which would inform the respondent of the time within which the

complaint must be answered, similar to a summons in federal court. The proposed rule would also amend 46 CFR 502.304(d), governing claims filed under Subpart S, Informal Procedure for Adjudication of Small Claims, to require the claimant to effectuate service when service by certified or registered mail by the settlement officer has been unsuccessful. A new form—Notice of Claim Filed—would be added to subpart S as Exhibit 3.

The proposed rule would conform the Commission's Rules regarding service more closely to the Federal Rules of Civil Procedure, which require the plaintiff or the plaintiff's attorney to be responsible for prompt service of a complaint. Also, the proposed amendment would remove the burden on the Commission to effect service on those occasions when service by certified mail or registered mail has been unsuccessful.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that because this rule deals only with agency practice and procedure, it will not have a significant impact on a substantial number of small entities, including small businesses, small organizational units, and small government jurisdictions.

List of Subjects in 46 CFR 502

Administrative practice and procedure, Claims, Equal access to justice, Informal procedures for investigations, Lawyers, Penalties, Reporting and recordkeeping requirements.

Therefore, notice is hereby given that the Commission proposes to amend part 502 of title 46 CFR as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 559, 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707-1711, 1713-1716; E.O. 11222 of May 8, 1965 (30 FR 6469); 21 U.S.C. 853a; and Pub. L. 88-777 (46 U.S.C. app. 817d, 817e).

2. Section 502.113 is revised to read as follows:

§ 502.113 Service by the Commission and complainant.

(a) Complaints filed pursuant to § 502.62, amendments to complaints (unless otherwise authorized by the presiding officer pursuant to § 502.70(b)), and complainant's opening memoranda filed in shortened

procedure cases will be served by the Commission by certified or registered mail. If service by the Commission is unsuccessful for any reason, the complainant must effectuate service in any manner and within the time period authorized by Rule 4 of the Federal Rules of Civil Procedure, notify the Secretary of the date and manner of service, and notify the respondent of the time, pursuant to § 502.64, within which respondent must answer the complaint. A form—Notice of Complaint Filed—is set forth in exhibit No. 1a, subpart E.

(b) In addition to and accompanying the original of every document filed with the Commission for service by the Commission, there shall be a sufficient number of copies for use of the Commission (see § 502.118) and for service on each party to the proceeding. [Rule 113)].

3. Section 502.304(d) is revised to read as follows:

§ 502.304 Procedure and filing fee.

(d) A copy of each claim filed under this subpart, with attachments, shall be served by certified or registered mail by the Settlement Officer on the respondent involved. If service by the Settlement Officer is unsuccessful for any reason, the claimant must effectuate service in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure, notify the Settlement officer of the date and manner of service, and notify the respondent of the time, pursuant to paragraph (e) of this section, within which respondent must answer the complaint. A form—Notice of Claim Filed—is set forth in exhibit 3, subpart S.

4. Exhibit No. 1a is added to subpart E, and exhibit No. 3 is added to subpart S to read as follows:

Exhibit No. 1a to Subpart E [§ 502.62]—Notice of Complaint Filed

Federal Maritime Commission, Washington, DC 20573

NOTICE OF COMPLAINT FILED
DOCKET NUMBER:

V.
TO: (Name and Address of Respondent)

You are hereby notified that a complaint has been filed against you, and you are required to file with the Secretary of the Commission and serve upon

COMPLAINANT OR COMPLAINANT'S ATTORNEY (Name and Address)

an answer to the complaint which is herewith served upon you, within _____ days after service of this notice upon you, exclusive of the day of service, unless

additional time is permitted under Rule 64 of the Commission's Rules of Practice and Procedure, 46 CFR Part 502 (See also Rules 2, 41, 42, 101, and 111-118). If you fail to answer timely, judgment by default may be taken against you for the relief demanded in the complaint.

Secretary, Federal Maritime Commission

Date

**Exhibit No. 3 to Subpart S (§ 502.304(d))—
Notice of Claim Filed**

Federal Maritime Commission, Washington,
DC 20573

**NOTICE OF CLAIM FILED
INFORMAL DOCKET NUMBER:**

V.

TO: (Name and Address of Respondent)

You are hereby notified that a claim has been filed against you, and you are required to file with the Settlement Officer, Federal Maritime Commission and serve upon CLAIMANT OR CLAIMANT'S ATTORNEY (Name and Address)

an answer to the claim which is herewith served upon you, within 25 days after service of this notice upon you, exclusive of the day of service, unless additional time is permitted by the Settlement Officer. Your failure to respond is conclusively deemed to indicate your consent to the informal complaint procedure (46 CFR 502.304(e)), and an adverse decision may be entered against you; such decision will become final unless the Commission elects to review it within 30 days of the date of its service (46 CFR 502.304(g)).

Settlement Officer

Date

By the Commission.

Ronald D. Murphy,
Assistant Secretary.

[FR Doc. 93-31505 Filed 12-28-93; 8:45 am]

BILLING CODE 6730-01-M

**FEDERAL COMMUNICATIONS
COMMISSION**

47 CFR Part 73

[MM Docket No. 93-177, Rm-7594; DA 93-1534]

**AM Radio Service Directional Antenna
Performance**

AGENCY: Federal Communications
Commission.

ACTION: Proposed rule; further extension
of reply comment period.

SUMMARY: The Commission further extends time for filing reply comments in its proceeding examining the policies and rules pertaining to the performance verification of directional antenna systems at AM Broadcast Radio Service

stations from December 29, 1993 to March 1, 1994. This action is being taken to allow parties knowledgeable in this area additional time for consultation and evaluation of the complex engineering issues raised in this Inquiry.

DATES: Reply comments are now due March 1, 1994.

ADDRESSES: Federal Communications
Commission, Washington, DC, 20554.

FOR FURTHER INFORMATION CONTACT:
Joseph Johnson, Mass Media Bureau,
(202) 632-9660.

SUPPLEMENTARY INFORMATION:

**Order Granting Further Extension of
Time**

Adopted: December 20, 1993; Released:
December 21, 1993.

Reply Comment Date: March 1, 1994.

By the Chief, Mass Media Bureau:

1. On June 14, 1993, the Commission adopted a Notice of Inquiry, 8 FCC Rcd 4345 (1993), 58 FR 36184 (July 6, 1993), ("Inquiry") in MM Docket 93-177 to examine the policies and rules pertaining to the performance verification of directional antenna systems at AM Broadcast Radio Service stations. The directional antenna rules were initially promulgated in the late 1930s when there were few operational stations and all engineering calculations were performed manually. In the years since those rules were established, they have been amended many times, but no thorough top-to-bottom review has ever been undertaken in order to bring them uniformly up to a state-of-the-art status. The purpose of the Inquiry was to commence such a process by gathering all of the data and other information necessary for releasing a comprehensive set of proposals for rule amendments. The original deadlines for filing comments and reply comments to the Inquiry were August 20, 1993 and September 7, 1993, respectively.

2. On July 12, 1993, the Association of Federal Communications Consulting Engineers requested an extension of the comment and reply comment periods. An Order Granting Extension of Time, 8 FCC Rcd 6324, (1993), 58 FR 45311 (August 27, 1993), was adopted on August 19, 1993, extending the dates for comments and replies to October 29, 1993 and December 29, 1993, respectively. As of the end of the comment period, approximately 20 formal comments had been received at the agency. In addition, a meeting was held on November 17, 1993 at the Commission between agency staff and several representatives of engineering consulting firms to discuss the progress

of gathering data for use in drafting proposed rule amendments.

3. The Commission now has before it a petition to further extend the date for filing of reply comments by 60 days. The petition was filed by the engineering firms du Treil, Lundin & Rackley; Hatfield & Dawson; Suffa & Cavell; Silliman & Silliman; and Moffet, Larson & Johnson. These firms are also the petitioners who originally requested this Inquiry. Petitioners state that they and others in the broadcast industry are engaged in a study of the issues raised in the Inquiry and that a forum will be held in January where all interested parties can discuss these matters with the aim of developing reply comments which are thorough and focused.

4. After reviewing the Inquiry comments and discussing some of the relevant issues with industry representatives, it is clear that the technical complexity involved in formulating certain of the necessary amendments to our rules is quite significant. For example, some of the computer software programs now available for analyzing antenna patterns are extremely complicated and any action by the agency to eliminate existing measurement requirements and substitute in their place theoretical calculations based on these programs must be based on a thorough examination of the software and an evaluation of how its use would affect antenna pattern accuracy. We believe that the petitioners and others are making progress in formulating their proposals, but that further work is necessary and that such work would be materially aided by the forum planned for January. Therefore we agree with petitioners that a further extension of the deadline for filing reply comments is warranted.

5. Accordingly, *It is ordered* That the request to extend the reply comment date filed by du Treil, Lundin & Rackley; Hatfield & Dawson; Suffa & Cavell; Silliman & Silliman; and Moffet, Larson & Johnson is granted. The date for filing reply comments is extended to March 1, 1994.

6. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and §§ 0.204(b), 0.283, 1.45 and 1.46 of the Commission's Rules.

7. Further information may be obtained from Joseph Johnson, Mass Media Bureau, Engineering Policy Branch, (202) 632-9660.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93-31802 Filed 12-28-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 76

[MM Docket No. 93-303; DA 93-1499]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on its proposal, initiated by a request filed by Diversified Communications, the licensee of television station WYOU(TV), Scranton, The New York Times Company, licensee of television station WNEP-TV, Scranton, and WBRE Associates, licensee of television station WBRE-TV, Wilkes-Barre, Pennsylvania (collectively "joint petitioners"), to amend the Commission's Rules, regarding Major Television Markets, to add the communities of Hazelton and Williamsport, Pennsylvania, to the Wilkes-Barre-Scranton, Pennsylvania television market. This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before January 18, 1994, and reply comments are due on or before February 2, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

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 Notice of Proposed Rule Making, MM Docket No. 93-303, adopted December 8, 1993, and released December 21, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rulemaking filed by the joint petitioners, proposed to amend

Section 76.51 of the rules to add the communities of Hazelton and Williamsport, Pennsylvania to the Wilkes-Barre-Scranton television market.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) The distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before us that the television stations license to Wilkes-Barre, Scranton, Hazelton and Williamsport do compete for audiences and advertisers throughout much, if not all, of the proposed combined market area, and that evidence has been presented tending to demonstrate commonality between the proposed communities to be added to a market designation and the market as a whole. Moreover, the joint petitioners' proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

Initial Regulatory Flexibility Analysis

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in

accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Ex Parte

5. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before January 18, 1994, and reply comments on or before February 2, 1994. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comment, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

7. Accordingly, this action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by § 0.283 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93-31801 Filed 12-28-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 76

[MM Docket No. 93-304; DA 93-1500]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on its proposal, initiated by a request filed by Golden Orange Broadcasting Co., Inc., to amend the

Commission's Rules, regarding Major Television Markets, to add the community of Anaheim to the Los Angeles-San Bernardino-Corona-Fontana, California hyphenated television market. This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before January 18, 1994, and reply comments are due on or before February 2, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

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 Notice of Proposed Rule Making, MM Docket No. 93-304, adopted December 8, 1993, and released December 21, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rulemaking filed by Golden Orange Broadcasting Co., Inc., licensee of KDOC-TV, Channel 56, Anaheim, California, proposed to amend Section 76.51 of the Rules to change the designation of the Los Angeles-San Bernardino-Corona-Fontana, California, television to include Anaheim as a designated community in the hyphenated market.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) The distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the

market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before us that Station KDOC-TV and stations licensed to communities in the subject television market do compete for audiences and advertisers throughout much of the proposed combined market area, and that evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, the petitioner's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

4. The Commission also noted that, by Report and Order in MM Docket No. 93-207, DA 93-1444 (released December 7, 1993), Section 76.51 was amended to add Riverside, California, as a designated community in the market. Additionally, the Commission recognized that the proposed major market adjustment under consideration involves a particularly large television market, the nation's second largest. In another proceeding, the Commission is considering several alternative possibilities other than market hyphenation to respond to competition issues that are raised with regard to stations operating in large markets under existing rules. See Notice of Proposed Rule Making in MM Docket No. 93-290 (Newton, New Jersey and Riverhead, New York), 58 FR 62085 (Nov. 24, 1993). In this regard, the Commission stated that interested parties may wish to address the issues raised in that proceeding in connection with the instant proposal.

Initial Regulatory Flexibility Analysis

5. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the

Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Ex Parte

6. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 C.F.R. Sections 1.1202, 1.1203 and 1.1206(a).

Comment Dates

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before January 18, 1994, and reply comments on or before February 2, 1994. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comment, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

8. Accordingly, this action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by § 0.283 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93-31803 Filed 12-28-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 571**

[Docket No. 93-02; Notice 03]

RIN 2127-AF14

Federal Motor Vehicle Safety Standards; Compressed Natural Gas Fuel Containers

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

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This notice proposes to modify the agency's January 1993 proposal to establish a new Federal motor vehicle safety standard related to Compressed Natural Gas Fuel Containers. In its earlier notice, the agency proposed several requirements to ensure the safety of CNG containers including a burst requirement to evaluate the container's initial strength and its degradation over time. In this notice, the agency is proposing to pattern the burst requirement more closely on the American National Standards Institute's (ANSI) voluntary industry standard, known as NGV2. The agency's decision to seek comment on this alternative approach is prompted by the agency's consultation with other Federal agencies and its review of comments to the January proposal and other available information.

DATES: *Comments:* Comments on this notice must be received by the agency no later than January 28, 1994.

Proposed effective date: The standard would become effective six months after publication.

ADDRESSES: Comments on this notice should refer to the above docket and notice number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5267. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Gary R. Woodford, NRM-01.01, Special Projects Staff, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4931).

SUPPLEMENTARY INFORMATION: On January 21, 1993, NHTSA published a notice of proposed rulemaking (NPRM) in which the agency proposed to establish a new Federal motor vehicle safety standard specifying performance

requirements for vehicles fueled by compressed natural gas (CNG).¹ (58 FR 5323). The proposal was based on comments received in response to an advance notice of proposed rulemaking (ANPRM) published on October 12, 1990 and other available information (55 FR 41561). The NPRM was divided into two segments: (1) Vehicle requirements regarding the integrity of the entire vehicle fuel system, and (2) equipment requirements regarding the fuel containers² alone.

The agency's proposals regarding equipment requirements for CNG containers included a proposal that the CNG containers would be subject to a pressure cycling test to evaluate container durability and a burst test to evaluate the container's initial strength and its degradation over time. More specifically, NHTSA proposed with respect to the burst test that a CNG fuel container would have to withstand an internal hydrostatic pressure of 3.50 times the service pressure for 60 seconds, without any leakage or circumferential deformation over one percent. The multiple of the internal hydrostatic pressure, 3.50, is known as the safety factor. The agency tentatively concluded that the burst test, together with a pressure cycling test, would be sufficient to assure adequate levels of safety performance for both the strength and durability of CNG fuel containers used in motor vehicles.

Inclusion of a burst test with a safety factor in the proposal was based on ANSI/AGA-NGV2-1992 (NVG2), an industry standard promulgated by the Natural Gas Vehicle Coalition (NGVC) that has subsequently been approved by ANSI. NGV2 specifies several sets of detailed material and design requirements. For each set of those requirements, the standard specifies a unique safety factor for calculating the internal hydrostatic pressure that the tank must withstand. The safety factors range from 2.25 to 3.50, depending on the material and design involved. Thus, to satisfy this aspect of the standard, a container must meet both the material and design requirements as well as the burst test.

The agency did not propose adoption of the material and design requirements of NGV2. Instead, the agency proposed the single safety factor of 3.50 for all containers, regardless of their materials

or design. It tentatively concluded that the factor would not impede technological development, yet would assure an acceptable level of safety for all containers.

CNG container manufacturers, CNG associates (NGVC and the American Gas Association (AGA)), utility companies, the American Automobile Manufacturers Association (AAMA) and other commenters addressed the issue of the safety factor. Most commenters disagreed with the agency's proposal to require that all containers meet a single safety factor.

NGVC, AGA, and the container manufacturers generally stated that they believed that the material and design of the fuel container must be taken into account in establishing an appropriate safety factor, if safe, cost-effective, and light-weight containers are to be produced. Establishing an overly high factor for a given combination of material and design could result in over-designed, heavy containers. They believed that some materials, such as fiberglass, need a higher safety factor because they degrade faster over time. In contrast, they stated that other materials such as steel or carbon composite maintain their strength for a longer time, and therefore containers made of those materials can be made with a lower safety factor.

Many of these commenters stated that the agency should adopt NGV2. NGVC and AGA believed that the NGVC voluntary standard provides a more appropriate level of safety, given the different container constructions, than the regulations proposed by NHTSA.

Two commenters said they believed that a single safety factor was appropriate. CNG Pittsburgh, a consulting firm, stated that a safety factor of 3.50 is conservative but reasonable for CNG fuel containers. AAMA stated that adopting NGV2's approach with various safety factors between 2.25 to 3.50 depending on the material and design involved would limit a manufacturer's choice of container designs and materials.

After reviewing the comments, NHTSA consulted with other Federal agencies knowledgeable about high pressure container technology, including the Department of Transportation's Research and Special Programs Administration (RSPA), the Department of Commerce's National Institute of Standards and Technology (NIST), and the National Aeronautics and Space Administration (NASA). From discussions with these agencies and analysis of comments to the NPRM, NHTSA has tentatively concluded that there are no procedures that could

¹ Natural gas is a vapor at standard temperature and pressure that is lighter than air. When used as a motor fuel, it is compressed in high pressure containers to increase the vehicle's driving range.

² Among the terms used to describe CNG fuel tanks are tanks, containers, cylinders, and high pressure vessels. The agency will refer to them as "containers" throughout this document.

adequately test a container's susceptibility to fatigue and degradation over time. Specifying a single safety factor would not protect in all instances against these problems since the strength of some containers is highly dependent on the specific material and method of design. Therefore, NHTSA is considering a burst test which links the use of particular designs and materials to compliance with safety factors tailored to those designs and materials, since it appears that this approach may be necessary to ensure the safe performance of pressure vessels used for fuel containers. The agency further notes that international standards addressing CNG fuel containers, including regulations of Transport Canada and those being drafted by the International Standards Organization (ISO) follow this practice; i.e., linking use of particular designs and materials with strength requirements suitable for those designs and materials.

Based on these considerations, NHTSA is requesting comment on the appropriateness of requiring CNG containers to meet design and material requirements, such as those specified in NGV2, and to meet safety factors tailored to those requirements. More specifically, the agency is considering NGV2's specifications of types of primary and reinforcement materials, construction methods and practices, container dimensions, composite reinforcement, and tests for yield strength, tensile strength, and material elongation (NGV2 1-5 a-e, 1-6 c-f, 1-7 a-e, 1-9 a and b, 1-12a, and 1-13 b1 and b2). The agency advises commenters to review NGV2 for specific information about these and other provisions that the agency may decide to include in the final rule.

NHTSA notes that by incorporating NGV2 material and design provisions in the FMVSS, the only way a container manufacturer could comply with the Federal standard would be with a container that uses those materials and designs specified in NGV2. To permit containers using other materials or designs not specified in NGV2, a manufacturer would have to petition NHTSA to amend the Federal standard. An alternative to the petition process would be for the Federal standard to specify a catch-all high end safety factor for any container whose design and materials are not specified in NGV2. While the agency is concerned whether inclusion of a high-end safety factor would be sufficient by itself to prevent the manufacture of containers using inferior designs or materials that degrade rapidly, it nevertheless requests comments about the appropriateness of

such a catch-all provision. More generally, the agency requests comment about the effect of adopting NGV2 on future container technology.

Rulemaking Analyses

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this supplemental proposal and determined that it is not "significant" within the meaning of Executive Order 12866 or the Department of Transportation regulatory policies and procedures. The agency believes that CNG container manufacturers already comply with NGV2. Thus, the estimates of potential regulatory impacts in the Preliminary Regulatory Evaluation remain valid. That evaluation has been placed in the docket for this rulemaking.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the discussion in the immediately preceding paragraph, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12612 (Federalism)

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the proposed rule would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

D. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this proposed rule. The agency has determined that this proposed rule, if adopted as a final rule, would not have any adverse impact on the quality of the human environment. On the contrary, because NHTSA anticipates that ensuring the safety of CNG vehicles would encourage their use, NHTSA believes that the proposed rule would yield positive environmental consequences because CNG burns cleaner than gasoline or diesel fuels. VII.

Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be

appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket at the above address. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and NHTSA recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

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

Issued on December 22, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93-31712 Filed 12-23-93; 9:48 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 215, 216, and 222**

[Docket No. 930404-3104; I.D. 122193B]

RIN 0648-AD11

Protected Species Special Exception Permits

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

ACTION: Proposed rule; notice of public briefing and extension of comment period.

SUMMARY: In response to several requests, NMFS will hold a second public briefing on a proposed rule to revise regulations for public display, scientific research, and enhancement permits. To enable interested persons that attend this briefing an opportunity to comment, the comment period on the proposed rule is extended by 2 weeks.

DATES: The public briefing on the proposed revised permit regulations will be held at 10 a.m., on January 7, 1994. Written comments on the proposed rule must be postmarked or received by January 28, 1994.

ADDRESSES: The briefing will be held in Building 9 Auditorium, NOAA Sand Point Facility, 7600 Sand Point Way NE., Seattle, WA 98115. Written comments on the proposed rule should be mailed to the Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Clearly mark the outside of the envelop "Proposed Rule Comments." A copy of the proposed rule may be obtained by writing to the same address, or by sending a facsimile to Ann Terbush at (301) 713-0376.

FOR FURTHER INFORMATION CONTACT: Ann Hochman, Ann Terbush, or Art Jeffers at (301) 713-2289, or Brent Norberg at (206) 526-6140. If you need accommodations to attend the briefing, please call Ann Hochman on (301) 713-2289 (voice). People who are deaf or hearing impaired may place a call through the Maryland Relay Service on 1-800-735-2258.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the Federal Register (58 FR 53320) on Thursday, October 14, 1993. Three

public hearings and one public briefing were held on the proposed rule (58 FR 58680). The comment period was extended previously until January 14, 1994 (58 FR 64285).

List of Subjects**50 CFR Part 215**

Administrative practice and procedure, Marine Mammals, Penalties, Pribilof Islands, Reporting and recordkeeping requirements.

50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine Mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: December 23, 1993.

William W. Fox, Jr.,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 93-31864 Filed 12-28-93; 8:45 am]

BILLING CODE 3510-22-P

50 CFR Parts 672 and 675**Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area**

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

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NMFS issues this notice that the North Pacific Fishery Management Council (Council) has submitted Amendment 25 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) for Secretarial review and is requesting comments from the public. Copies of the amendment may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on the FMP amendment should be submitted on or before February 22, 1994.

ADDRESSES: Comments on the FMP amendment should be submitted to

Ronald J. Berg, Chief, Fisheries Management Division; Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska, 99802 (Attn: Lori Gravel).

Copies of the amendment and the environmental assessment/regulatory impact review prepared for the amendment are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510 (telephone 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Susan Salvesson, National Marine Fisheries Service, Alaska Region, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon reviewing the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve the plan or amendment.

Amendment 25 would eliminate the primary pacific halibut prohibited species catch (PSC) limit that, when reached, closes Bycatch Limitation Zones 1 and 2H of the Bering Sea.

A proposed rule to implement Amendment 25 has been submitted for Secretarial review and approval. The proposed rule also includes regulatory amendments that would (1) authorize the release of vessel specific observer data on bycatch of prohibited species, and (2) prohibit the discard of salmon taken as bycatch in the BSAI groundfish trawl fisheries until each salmon has been counted by a NMFS-certified observer.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: December 23, 1993.

Richard H. Schaefer,

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

[FR Doc. 93-31830 Filed 12-23-93; 2:01 pm]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 58, No. 248

Wednesday, December 29, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 23, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA,
OIRM, room 404-W Admin. Bldg.,
Washington, DC 20250, (202) 690-
2118.

Revision

- Farmers Home Administration
7 CFR 1924-A, Planning and Performing
Construction and Other Development
FmHA 1924-1, 2, 3, 5, 6, 7, 9, 10, 11,
12, 13, 18, 19, 25, and CC-257
Recordkeeping; on occasion
Individuals or households; farms;
businesses or other for-profit; non-
profit institutions; small businesses or
organizations; 412,582 responses;
141,696 hours
Jack Holston (202) 720-9736

Reinstatement

- Farmers Home Administration
7 CFR 1948-C, Intermediary Relending
Program
Form FmHA 1948-1
Recordkeeping; on occasion
State or local governments; businesses
or other for-profit; non-profit
institutions; small businesses or
organizations; 5,030 responses; 17,258
hours
Jack Holston (202) 720-9736
- Farmers Home Administration
7 CFR 1956-C, Debt Settlement—
Community and Business Programs
On occasion
Individuals or households; State or local
governments; businesses or other for-
profit; non-profit institutions; 55
responses; 448 hours
Jack Holston (202) 720-9736
- Farmers Home Administration
7 CFR 1951-E, Servicing of Community
and Insured Business Programs Loans
and Grants
FmHA 1951-15; 1951-33
On occasion
State or local governments; non-profit
institutions; 180 responses; 120 hours
Jack Holston (202) 720-9736

New Collection

- Agricultural Stabilization and
Conservation Service
7 CFR Part 1464, Subpart B—Importer
Assessments
CCC-100
Every 10 days
Businesses or other for-profit; 3,600
responses; 11,300 hours
Gary Wheeler (202) 720-7562
- Forest Service
Cultural Perceptions of Wildland
Recreation
Quarterly
Individuals or households; 1,860
responses; 480 hours
Donald B.K. English (706) 546-2451
Donald E. Hulcher,
Deputy Department Clearance Officer.
[FR Doc. 93-31716 Filed 12-28-93; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

**Feather Fork Mine Development,
Plumas National Forest; Intent to
Prepare an Environmental Impact
Statement**

SUMMARY: The Department of
Agriculture, Forest Service, will prepare

an Environmental Impact Statement to disclose the environmental consequences of the proposed Feather Fork Mine development by Plumas Gold, USA, Inc. The project is located on the La Porte Ranger District, Plumas National Forest, Plumas County, California. The Feather Fork Mine is on both private and public lands, and is approximately 5 air miles northeast of the town of La Porte, California in Section 14, T. 22 N., R. 9 E, Mt. Diablo Meridian. The Forest Service invites written comments on this proposal. A full environmental analysis will be conducted. The Draft Environmental Impact Statement (DEIS) will be published in February 1994 and the Final Environmental Impact Statement (FEIS) will be available for review in May 1994.

DATE: Comments concerning the scope of analysis should be received in writing by January 14, 1994.

ADDRESSES: Submit written comments and suggestions to Charles W. Smay, District Ranger, PO Drawer 369, Challenge, CA 95925.

FOR FURTHER INFORMATION CONTACT: Michael A. Heath, Resource Officer, phone 916-675-2462. (The person who can answer most of the questions on the project).

SUPPLEMENTARY INFORMATION: The Plumas National Forest Land and Resource Management Plan provides direction for management of the project area located within Management Area 15, Little Grass. The Forest Plan has designated the area to be managed under the Timber Emphasis and Maximum Modification Prescriptions.

The project proposal is an underground gold mining operation submitted by Plumas Gold Mines USA, Inc. A new decline will be constructed to access the underground workings and transport ore to the surface. Gravels will be loaded by a road header onto trucks, much like a coal mining operation. This material will be stock piled for processing seven days a week. The gravels will be passed through a grizzly and onto a wash plant for sizing and washing. A jig and gold room will be used for the final concentration of gold. The mine life is 20 years at the design rate of 500 tons per day. Total tons to be mined is 3,600,000. Approximately 15-20 workers will be employed by Plumas Gold Mines, USA.

To maintain a 500 tons per day processing rate, winter access will be required by plowing snow over 10 miles of the main access road to the mine. A range of alternatives for this project will be considered, one of which would be a no action alternative. Other alternatives include various combinations of winter access to resolve conflicts with winter sport activities.

H. Wayne Thornton, Forest Supervisor, Plumas National Forest, Quincy, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). Some initial scoping and analysis has been completed for this proposed project. Major issues at this point include: (1) Conflict with other uses of the forest resources with "right to access" under the 1872 Mining Law, and (2) The mine site is located in a Protected Activity Area (PAC) for the California Spotted Owl.

The Forest Service will be seeking information, comments and assistance from federal, state agencies, local agencies, and other individuals and organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the FEIS. The scoping process includes:

1. Identifying potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The U.S. Forest Service is the Lead Agency. The Plumas County Planning Department has agreed to participate as a cooperating agency to evaluate impacts on both private and public lands that may exist in the proposed mining area.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by January 1994. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency's Notice of Availability appears in the **Federal Register**. To be most helpful, comments on the DEIS should be as specific as

possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period for the DEIS ends, the comments received will be analyzed and considered by the Forest Service in preparation of the FEIS. The FEIS is scheduled to be completed by April 1994. In the FEIS the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: December 2, 1993.

Calvin Bird,
Acting Forest Supervisor.
[FR Doc. 93-31856 Filed 12-28-93; 8:45 am]
BILLING CODE 3410-11-M

Rural Electrification Administration

Western Farmers Electric Cooperative; 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 project proposed by Western Farmers Electric Cooperative (Western Farmers), of Anadarko, Oklahoma. The proposed project consists of the construction of approximately 32.0 miles of 138 kV transmission line and associated facilities in Pittsburg and Latimer Counties, Oklahoma.

REA has concluded that the environmental impacts from the proposed project would not be significant and that the proposed action is not a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not required.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, REA, Agriculture South Building, Washington, DC 20250, telephone (202) 720-1784.

SUPPLEMENTARY INFORMATION: REA, in accordance with its environmental policies and procedures, required that Western Farmers prepare a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facilities. The BER, which includes input from the Federal, State, and local agencies, has been adopted as REA's Environmental Assessment for the project in accordance with 7 CFR 1794.61. REA has concluded that the BER represents an accurate assessment of the environmental impacts of the project. The proposed project should have no impact on cultural resources, floodplains, wetlands, water quality and Federally listed or proposed for listing threatened or endangered species or their critical habitat. Approximately 2.4 acres of prime farmland will be impacted by the proposed Manning Substation.

The proposed transmission line will tap Western Farmers' existing Tupelo-Lone Oak Transmission Line at a site approximately 1.5 miles north of Hartshorne, Oklahoma. The line will extend approximately 15.0 miles east to the proposed Manning Substation site located approximately 2.0 miles southwest of the town of Wilburton. The line would then continue east approximately 17.0 miles to the new Red Oak Substation site located approximately 4.0 miles southwest of the town of Red Oak.

Alternatives considered to the project as proposed were no action, purchase of power from Oklahoma Gas and Electric, renewal of existing contracts for substation use and wheeling of power with Public Service of Oklahoma, and

alternative routes. REA has considered these alternatives and concluded that the project as proposed meets the present and future engineering and economic needs of Western Farmers and its member systems.

Copies of the BER and FONSI are available for review at REA at the aforementioned address, or can be reviewed at or obtained from the offices of Western Farmers, 710 NE 7th Street, Anadarko, Oklahoma 73005.

Dated: December 22, 1993.

Wally Beyer,
Administrator.

[FR Doc. 93-31721 Filed 12-28-93; 8:45 am]
BILLING CODE 3410-15-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Wednesday, January 26, 1994, at the Sheraton River House, 3900 NW 21st Street (1/4 mile from the Miami International Airport), Miami, Florida 33142. The purpose of the meeting is to discuss the status of the Commission, SACs, 1994 appropriations, and staff and Commissioner appointments; discuss and update the current project, "Racial and Ethnic Tensions in Florida," and to discuss civil rights developments in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Bradford Brown, 305-361-4284, or Bobby D. Doctor, Director of the Southern Regional Office, 404-730-2476 (TDD 404-730-2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 17, 1993.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.
[FR Doc. 93-31634 Filed 12-28-93; 8:45 am]
BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Request for Amendment Action.

Agency Form Number: BXA-685P.

OMB Control Number: 0694-0007.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 224 hours.

Number of Respondents: 840.

Avg Hours Per Response: 15 minutes for form; 1 minute for recordkeeping.

Needs and Uses: This requirement permits U.S. exporters of controlled goods to amend their outstanding export licenses. The amendment, if approved by BXA, allows the exporter to make the changes in lieu of applying for a new license.

Affected Public: Businesses or other for-profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395-7340.

Agency: Bureau of Export Administration (BXA).

Title: Notification of Delivery Verification Requirement.

Agency Form Number: BXA-648P.

OMB Approval Number: 0694-0008.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 6 hours.

Number of Respondents: 11.

Avg Hours Per Response: 30 minutes.

Needs and Uses: In order to increase the effectiveness of export controls on international trade in strategic commodities, COCOM and other countries participate in the Import Certificate/Delivery Verification procedure. This clearance request is for the form used to notify U.S. exporters that they must require from their foreign consignee a certification that the commodities exported were actually delivered to the foreign consignee.

Affected Public: Businesses or other for-profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395-7340.

Agency: Bureau of Export Administration (BXA).

Title: Recordkeeping Requirements Under General License GLOG.

Agency Form Number: No form number but requirements can be found at Section 771.7(b) of the Export Administration Regulations.

OMB Approval Number: 0694-0065.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 50 hours.

Number of Recordkeepers: 50.

Avg Hours Per Recordkeeper: 1 hour.

Needs and Uses: BXA needs information to be maintained for the record to ensure that unprocessed western red cedar being exported is not harvested from public lands and therefore not subject to short supply regulations. These records are subject to audit.

Affected Public: Businesses or other for-profit institutions, small businesses or organizations.

Frequency: Recordkeeping.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395-7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title of Survey: Marine Mammal Takings (Stranding Reports).

Agency Form Number: None assigned.

OMB Approval Number: 0648-0178.

Type of Request: Revision of a currently approved collection.

Burden: 1,333 hours.

Number of Respondents: 650.

Avg Hours Per Response: 20 minutes.

Needs and Uses: Marine mammal stranding reports provide baseline information on marine mammal mortalities, human interactions, and population dynamics. The agency uses the information to fulfill its management responsibilities under the Marine Mammal Protection Act. The information is submitted primarily by volunteer members of the marine mammal stranding networks.

Affected Public: Individuals, state or local governments, federal agencies or employees, and non-profit institutions.

Frequency: On occasion — as strandings occur.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395-7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Cooperative Game Fish Tagging Report.

Agency Form Numbers: NOAA 88-162 and 88-163.

OMB Approval Number: 0648-0247.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 360 hours.

Number of Respondents: 2,000.

Avg Hours Per Response: 2 minutes.

Needs and Uses: The Cooperative Marine Game Fish Tagging Program began in the Southeast Region in 1971. Data are needed to determine migratory patterns, distance traveled, stock boundaries, age, and growth of billfish and other recreational and commercially valued species. Anglers volunteer to participate in the program. Resulting analyses are used to develop fishery management plans.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395-7340.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Gary Waxman or Don Arbuckle, as appropriate, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: December 22, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93-31839 Filed 12-28-93; 8:45 am]

BILLING CODE 3510-CW-F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1996 Pretests for the Survey of Income and Program Participation (SIPP) Redesign.

Form Number(s): Control, Core and Topical Modules In An Automated Instrument, and Reminder Card.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 840 hours.

Number of Respondents: 840.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The 1996 Pretests are part of a program of evaluation and development emerging from a comprehensive reassessment of the SIPP. The SIPP redesign is an evolving process that has multiple developmental and testing stages. Full implementation of the SIPP redesign is scheduled for February 1996. This clearance request is to accommodate pretests using a newly designed automated survey instrument. The pretests will involve two waves of interviews. The persons interviewed in Wave 1 will be interviewed again 4 months later in Wave 2. Objectives of the pretests are: to evaluate the total integration of the automated instrument; to observe field interviewing techniques through laptop management application; to assess the case management system's ability to assign, accept, and transfer cases; and to test closeout activities and post-closeout data preparations. Pretest interviewing

will take place between April and September 1994.

Affected Public: Individuals or households.

Frequency: Twice during 1994.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 23, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93-31835 Filed 12-28-93; 8:45 am]

BILLING CODE 3510-07-F

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 11/16/93-12/15/93

Firm name	Address	Date petition accepted	Product
Ioline Corporation	12020 113th Avenue Northeast, Kirkland, WA 98034.	11/20/93	Vinyl sign cutter and computer aided design plotter.
Enterprise Machine & Development Corporation.	100 Fernwood Avenue, New Castle, DE 19720.	11/24/93	Air texturing machine, air jet manifold.
United States Gear Corporation	9420 Stony Island Avenue, Chicago, IL 60617.	11/24/93	Gears for trucks.
Aviat, Inc	672 South Washington Street, Afton, WY 83110.	11/26/93	Light aircraft.
Dynabil Industries, Inc	P.O. Box 810, Flint Mine Road, Cocksackie, NY 12051.	11/26/93	Aircraft skins, brackets door, window frames, structural and exhaust assembly components.
Refractron Technologies Corp	5750 Stuart Avenue, Newark, NY 14513 ...	11/29/93	Ceramic filters and diffusers and filter drier cores.
Cris Craft, Ltd	3152 Maiden Lane, Manchester, MD 21102.	11/29/93	Ladies skirts, shorts and warm-up suits.
North Bergen Piece Dye Works, Inc	1701 75th Street, North Bergen, NJ 07047	12/01/93	Dyed and finished woven fabric made of polyester, nylon, acetate and rayon.
Insulated Duct & Cable Company	96 Stokes Avenue, Trenton, NJ 08605	12/07/93	Tubing and hoses.
PCI Group, Inc	Industrial Park, Box B-976, New Bedford, MA 02741.	12/07/93	Shoe eyelets.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 11/16/93-12/15/93—Continued

Firm name	Address	Date petition accepted	Product
Nevin Laboratories, Inc	5000 S. Halsted Street, Chicago, IL 60609	12/07/93	Dental work stations and cabinets, of sheet steel, with countertops, lights and shelves.
S. Bent & Bros., Inc	85 Winter Street, Gardner, MA 01440	12/07/93	Tables, chairs and case goods.
Wagner Mining & Construction Equipment Company.	P.O. Box 20307, Portland, OR 97220-0307.	12/07/93	Scoop trams and mining and coal vehicles.
American Massage Products, Inc	341 Central Avenue, Silver Creek, NY 14136.	12/10/93	Therapeutic chairs and therapeutic beds.
Synahi Castings, Inc	P.O. Box 2097, Greenwood, SC 29646	12/10/93	Textile machine parts and electrical control components.
A&D Fashions, Inc	55-57 South 7th Street, Emmaus, PA 18049.	12/14/93	Ladies tops and T-shirts.
Cattle Kate, Inc	3530 South Park Drive, Jackson, WY 83001.	12/14/93	Silk scarves.
DTM Products, Inc	6268 Monarch Park Place, Niwot, CO 80503.	12/14/93	Computer parts, burglar alarm parts, roller blades wheels, tooth brushes and waterpiks.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: December 22, 1993.

Pedro R. Garza,

Deputy Assistant Secretary for Program Operations.

[FR Doc. 93-31840 Filed 12-28-93; 8:45 am]

BILLING CODE 3510-24-M

International Trade Administration [A-533-809]

Notice of Final Determination of Sales at Less Than Fair Value. Certain Forged Stainless Steel Flanges from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 29, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or Brian Smith, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-1756 or (202) 482-1766, respectively.

FINAL DETERMINATION: The Department of Commerce (the Department) determines that certain forged stainless steel flanges (flanges) from India are being, or likely to be, sold in the United States at less than fair value, as provided in Section 735 of the Tariff Act of 1930, as amended (the Act). We also determine that critical circumstances exist for Mukand Ltd. (Mukand), Sunstar Metals Ltd. (Sunstar), Bombay Forgings Pvt. Ltd. (Bombay Forgings) Dynaforge and for all other manufacturers, producers or exporters of subject merchandise. Further, we determine that critical circumstances do not exist for Akai Impex Ltd. (Akai). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of the preliminary determination on July 29, 1993, (58 FR 41713 (August 5, 1993)), the following events have occurred. On August 2,

1993, Akai, one of the respondents in this investigation, submitted its response to the Department's deficiency letter regarding U.S. sales data.

On August 6, 1993, Akai requested a postponement of the final determination. We granted Akai's request and on August 11, 1993, we postponed the final determination until not later than December 20, 1993 (58 FR 44493 (August 23, 1993)).

On August 10, 1993, Akai requested a hearing. On August 13, 1993, Mukand, another respondent, also requested a hearing. However, both respondents withdrew their request prior to the scheduled hearing date.

On August 11, 1993, we received Akai's response to information requested by the Department concerning the production of subject merchandise sold during the period of investigation (POI).

On August 25, 1993, we received Akai's response to the Department's supplemental deficiency questionnaire regarding sales and cost data.

On August 30, 1993, Mukand submitted its case brief. Also on August 30, 1993, we received cost questionnaire responses from Forshas Forgings Pvt. Ltd. (Forshas) and Echjay Forgings Pvt. Ltd. (Echjay), two unrelated companies to whom Akai subcontracted a portion of its production of flanges. On August 31, 1993, we received a cost response from M.K. Engineers, another of Akai's unrelated subcontractors. However, these submissions were not filed in accordance with 19 CFR 353.31 and 353.32. Therefore, we returned these submissions and allowed these companies to resubmit their responses by no later than September 17, 1993. All three companies refiled their Section D

submissions within the prescribed deadline.

On September 15, 1993, we requested further information and clarification of the cost responses submitted by Echjay, Forshas and M.K. Engineers. On September 22, 1993, we received a response from Echjay. We did not receive response from either Forshas or M.K. Engineers.

On September 23, 1993, we advised Akai that there were discrepancies in its total volume and values reported in its previous response. On the same day, Akai submitted revised statistics for its sales exported to the United States during the period January 1991 to July 1993, a revised U.S. sales listing, and its audited balance sheet for the year ending March 31, 1993.

From October 4 through October 13, 1993, we verified the questionnaire responses submitted by Akai, Echjay and Forshas and M.K. Engineers. On October 18, 1993, we received comments from Echjay concerning our method of determining the "all other" rate.

We received case briefs from petitioners and Akai on November 17, 1993. We received rebuttal briefs from petitioners and Akai on November 21, 1993.

On November 22, 1993, petitioners alleged that both Akai and Mukand were planning to circumvent the upcoming antidumping duty order, should one be issued. On December 8, 1993, Gerlin, Inc., one of the petitioners in this investigation, also submitted a letter to the Department concerning possible circumvention of the potential antidumping duty order. Since this information was received too late to be addressed in this investigation pursuant to CFR 353.31(a)(1)(i), we have forwarded this information to the office of Antidumping Compliance for consideration.

Scope of Investigation

The products covered by this investigation are certain forged stainless steel flanges, both finished and not-finished, generally manufactured to specification ASTM A-182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, (used for butt-weld line connections), threaded, (used for threaded line connections), slip-on & lap joint, (used with stub ends/butt-weld line connections), socket weld, (used to fit pipe into a machined recession), and blind, (used to seal off a line). The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above

described merchandise are included in the scope. Specifically excluded from the scope of this investigation are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A-351. The flanges subject to this investigation are currently classifiable under subheading 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this investigation remains dispositive.

Period of Investigation

The POI is July 1, 1992, through December 31, 1992.

Such or Similar Comparisons

We have determined that the product covered by this investigation constitutes a single category of such or similar merchandise.

Fair Value Comparisons

To determine whether sales of flanges from India to the United States were made at less than fair value, we compared the United States Price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Bombay Forgings and Dynaforge

As discussed in detail in our preliminary determination, as best information available (BIA), we are assigning Bombay Forgings and Dynaforge the highest rate in the petition. These two companies failed to respond to our mini-Section A antidumping questionnaire.

Mukand and Sunstar

As discussed in detail in our preliminary determination, as BIA we are also assigning Mukand and Sunstar the highest rate in the petition. We determined that these two companies significantly impeded our proceeding. (See Comment 2 in the "Interested Party Comments" Section of this notice for further discussion.)

Akai

United States Price

For Akai, we based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation. We calculated purchase price based on packed, CIF (*i.e.*, cost, marine insurance and freight) prices to unrelated customers. We corrected Akai's data for minor errors and

omissions found at verification. We made deductions for ocean freight, marine insurance and containerization, which included foreign inland freight, in accordance with section 772(d)(2) of the Act. Regarding marine insurance, we determined that Akai incorrectly reported these expenses for a significant number of transactions. Accordingly, we have based the deductions for these expenses on BIA. As BIA, we used the highest verified percentage of gross unit price represented by this expense and applied this percentage to all of Akai's sales transactions. (See Comment 5.)

Foreign Market Value

We have used constructed value (CV) to calculate FMV for Akai because Akai does not have sales in the home market or sales to third countries.

We have determined that Akai is the producer in this investigation because Akai controls the costs for all elements incorporated in the manufacture of the subject merchandise. (See final concurrence memorandum dated December 20, 1993, for a detailed analysis of our decision. (See also Comment 1.)

We relied on the CV submitted data, except in the following instances where the costs were not approximately quantified or valued:

1. Since Akai had incorrectly applied its packing cost calculation methodology to more than 45 percent of the transactions examined, as BIA, we recomputed packing costs using the highest verified percentage of gross unit price represented by this expense (See Comment 5);

2. We increased general and administrative expenses (G&A) to account for depreciation expense on administrative fixed assets (See Comment 14);

3. We increased the cost of manufacturing (COM) by the weighted-average variance noted at verification from sampled cost of manufacturing components (See Comment 11);

4. We included quality control costs incurred during the POI in the COM (See Comment 13);

5. For product codes with duplicate costs, we used the highest value reported for each product code, as BIA;

6. For one product code with an aberrational material cost, we used the reported material cost for the most similar flange; and

7. For those product codes for which we did not have product specific CV, as BIA, we applied the highest margin otherwise calculated for Akai to those sales transactions.

In accordance with section 773(e)(1) of the Act, we included in CV Akai's

cost of materials and fabrication based on Akai's acquisition prices from its subcontractors for the manufacturing of subject merchandise. We also included the greater of (1) Akai's reported general expenses or (2) the statutory minimum of ten percent of COM. For profit, we used the statutory minimum of eight percent of the sum of COM and general expenses because Akai had no home market or third country sales. We also used U.S. selling expenses (direct and indirect) as a surrogate for home market class or kind selling expenses because Akai had no home market or third country sales.

Before comparing USP to CV, we corrected Akai's data for minor errors and omissions found at verification. We reclassified Akai's export expenses, bank charges and export credit guaranty corporation (ECGC) commissions, reported in Akai's cost responses but not separately identified in its U.S. sales listings, as direct selling expenses. (See Comment 6.) We also recalculated credit expenses, using the revised payment dates noted at verification. (See Comment 8.) We then made circumstance of sale adjustments, where appropriate, for credit, bank charges, ECGC commissions, stamp fees and export expenses. We added packing to the FMV

Currency Conversion

Because certified daily exchange rates from the Federal Reserve were unavailable, we made currency conversions based on the official quarterly exchange rates in effect on the dates of the U.S. sales as certified by the U.S. Treasury.

Verification

As provided in section 776(b) of the Act, we verified information provided by Akai and its subcontractors by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of the subject merchandise from India. Section 735(a)(3) of the Act provides that critical circumstances exist if:

- (A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or
- (ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the

exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Under 19 CFR 353.16(f), we normally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

In determining knowledge of dumping, we normally consider margins of 15 percent or more sufficient to impute knowledge of dumping under section 735(a)(3)(A)(ii) for exporters sales price sales, and margins of 25 percent or more for purchase price sales. (See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198, (June 29, 1987)).

For purposes of determining whether critical circumstances exist, we have determined that there is no history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of this investigation. Moreover, because the final margin for Akai is less than 25 percent, we determine in accordance with section 735(a)(3)(A)(i) of the Act that knowledge of dumping does not exist for that company. Regarding massive imports, we determine that Akai had massive imports during the POI, based on the above criteria. However, because neither history nor knowledge of dumping exists for Akai, we determine that critical circumstances do not exist for Akai.

Regarding Mukand, Sunstar, Bombay Forgings, and Dynaforge, since the final margins for those companies are over 25 percent, we determine that knowledge of dumping exists, in accordance with section 735(a)(3)(A)(ii) of the Act. Furthermore, as BIA for these companies, we are making the adverse assumption that imports were massive over a relatively short period of time in accordance with section 735(A)(3)(B) of the Act. Based on this analysis, we determine that critical circumstances exist for imports of flanges from India for Mukand, Sunstar, Bombay Forgings and Dynaforge.

With respect to the firms covered by the "all others" rate, because the final margin exceeds 25 percent, we determine in accordance with section 735(a)(3)(A)(ii) of the Act that knowledge of dumping exists. Also, because we have determined that Akai

and all other companies assigned a margin in this investigation had massive imports during the POI, we are also determining that massive imports exist for "all other" manufacturers, producers or exporters of subject merchandise. Therefore, we determine that critical circumstances exist for "all other" manufacturers, producers or exporters of subject merchandise.

Interested Party Comments

Comment 1

Petitioners contend that Akai is not the proper respondent in this case because Akai cannot be considered the manufacturer, insofar as Akai does not own any of the machines used in the manufacturing or finishing of the subject merchandise, did not direct or control the production of the subject merchandise during the POI, and could not demonstrate at verification that it purchased all the raw materials used by its subcontractors. Therefore, petitioners contend that Akai's costs and financial data cannot be used in any margin calculation. Petitioners further state that the facts in this case are almost identical to those in Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan; Final Results of Changed Circumstances Antidumping Administrative Review, 58 Fed. Reg. 32644 (June 11, 1993) ("MMF Sweaters"), where the Department found that the respondent (Jia Farn) was not a producer, but was simply reselling merchandise made by other manufacturers.

Akai argues that it is the producer of the subject merchandise insofar as it purchases and delivers the raw materials to subcontractors, controls the production and inspection of the end products, and owns the machines which were used for the finishing of flanges at its related party. Akai also states that at a minimum, it is an appropriate respondent as a reseller.

DOC Position

We disagree with petitioners that Akai is not the producer of the subject merchandise under investigation. Based on the facts set forth below, we have determined that Akai is the producer of this merchandise and, consequently, its costs are the appropriate basis for CV.

In this investigation, the Department is basing FMV on CV. Under section 773(e)(1) of the Act, as well as 19 CFR 353.50(a), the Department is required, in calculating CV, to determine the sum of the costs for materials, fabrication, and packing, as well as general expenses and profit. The Department is required to capture all the costs involved in the

production of the subject merchandise, and must therefore look to the company that controls the costs of production of the merchandise.

We verified that Akai purchases and maintains title (during the entire course of production) to the raw materials used for the production of the vast majority of the flanges, and that Akai directs and controls the manufacturing process insofar as it determines the quantity, size, and type of flanges to be produced. Accordingly, for the vast majority of the flanges produced and sold during the POI, we have determined that Akai controls the costs for all elements incorporated in the production of the flanges.

For a small percentage of the flanges produced and sold in the POI, Akai purchased completed rough flanges from unrelated producers. Some of these rough forgings were forwarded to machining shops for further manufacturing prior to shipment to the United States. We are using Akai's acquisition price to these unrelated forgers in constructing a value for the manufacture of these forgings. We are also using Akai's acquisition price for the small quantity of rough and machined flanges purchased from its wholly-owned related company. Ideally, we would use the costs of those manufacturers in calculating CV for those rough flanges sent to the United States without further manufacturing. However, all of the flanges are essentially fungible, and it is not possible to separate the sales of those flanges from the rest of the sales. On the basis of the information available, it is reasonable, in the context of calculating the estimated dumping margin in this investigation, to use Akai's acquisition cost for this comparatively small number of flanges.

We also disagree with petitioners regarding MMF Sweaters. This case is readily distinguishable from MMF Sweaters in that Jia Farn could not show that it bought the raw materials used to produce the subject merchandise, directed or controlled the process of manufacture or production, or performed any processing on the subject of merchandise Akai, on the other hand, performs all of these functions with respect to most of its sales of flanges.

Comment 2

Mukand argues that both the Department's termination of the investigation with respect to Mukand and the continued application of the most adverse BIA rate to that company is inappropriate. Mukand asserts that the antidumping law is intended to be

remedial, rather than punitive, in nature. Accordingly, Mukand contends that the Department's refusal to consider Mukand's data achieves none of the goals intended by the antidumping law.

Moreover, Mukand contends that it did not seriously impede the proceeding (the basis cited by the Department for using BIA), in that once Mukand became aware of the inconsistencies in its responses, it took all the necessary steps to correct the problem. Mukand asserts that, by assigning it the highest rate in the petition, the Department is effectively ignoring the numerous timely submissions made by Mukand, as well as the remedial actions taken by the company after the difficulties were identified.

According to Mukand, the Department should reconsider its position and use Mukand's actual data in the final determination. Alternatively, Mukand argues that, in the event that the Department determines that BIA is justified, the Department should apply a less adverse BIA rate because it "substantially cooperated" in the investigation.

DOC Position

In a June 22, 1993, memorandum to Barbara R. Stafford, Deputy Assistant Secretary for Investigations, we determined that Mukand and Sunstar, by their submissions of misleading and contradictory information, had significantly impeded this investigation. Section 776(c) of the Tariff Act of 1930, as amended, provides that whenever a party significantly impedes an investigation, the Department shall use BIA. We determined that, as evidenced by their submissions, respondents had misled the Department as to their business relationship and selling products. This information was critical to our analysis, and, without credible information, we were unable to proceed with the investigation. Accordingly, because Mukand and Sunstar have significantly impeded the Department's antidumping duty investigation, the statute requires the application of BIA. As BIA we used the highest margin contained in the petition.

Comment 3

Petitioners argue that Echjay and Forshas knew that the merchandise they were manufacturing for Akai was destined for the United States. Petitioners state that this is a critical point because the fact that these manufacturers knew the goods were to be exported must be taken into account by the Department in its determination of who the appropriate producer, and therefore respondent, is in this

investigation. Specifically, petitioners cite Antifriction Bearings (Other Than Taper Roller Bearings) and Parts Thereof From France: et al; Final Results of Antidumping Duty Administrative Reviews (57 FR 28360, June 24, 1992), where the Department terminated its review of a reseller of antifriction bearings on the grounds that the reseller's suppliers had knowledge at the time they sold their merchandise to the reseller that those sales were destined for the United States. Petitioners note that in that review the Department reasoned that the suppliers were effectively acting as exporters, and, as such, the Department determined that it must use the pricing structure of the suppliers (rather than the resellers) to measure dumping activity. Petitioners contend that the fact pattern in the instant investigation is directly analogous, because Echjay and Forshas knew that the flanges in question were destined for the United States. Consequently, petitioners argue that Akai's U.S. prices are not relevant and that the Department should terminate its investigation of Akai.

DOC Position

We disagree. In this case, the Department has determined that Akai is the producer of the merchandise under investigation and, consequently, is the appropriate respondent. (See Comment 1, above.) Therefore, it is irrelevant whether the subcontractors to which Akai paid an acquisition fee for processing its raw material knew the ultimate destination of the end product.

Comment 4

Akai argues that, in contrast to the data available at the preliminary determination, the Department now has sufficient information with which to calculate its dumping margin. Akai notes that the Department verified the fundamental data in Akai's submissions and that, in those cases where the Department found discrepancies at verification, either they involved minor adjustments or the Department was able to obtain the data to make the necessary corrections.

Petitioners disagree, stating that not only is Akai not the proper respondent in this investigation, but also the errors and omissions discovered at verification were so significant that their correction would result in an entirely new response. Moreover, petitioners maintain that the information collected at verification was "new information" and that the Department is prohibited from using it under § 353.31 of the Department's regulations because it is untimely.

DOC Position

We agree with Akai. Although at verification we found errors in the calculation of certain of Akai's expenses, the errors were not so significant as to call into question the fundamental integrity of Akai's response. Moreover, contrary to petitioners' assertions, we did not accept "new information" at verification. Rather, we found that Akai failed to report certain direct selling expenses in its U.S. sales listing. This information, however, was on the record prior to verification as part of the Section D response. Accordingly, we have accepted Akai's response for purposes of the final determination.

Comment 5

Petitioners argue that Akai incorrectly reported its packing and marine insurance expenses in a significant number of instances. Regarding packing, petitioners assert that the Department sampled the packing material expenses reported and found that Akai had incorrectly applied its calculation methodology in over 45 percent of the cases. Moreover, petitioners assert that Akai completely failed to report packing labor expenses. Regarding marine insurance, petitioners contend that Akai incorrectly reported these expenses for over 66 percent of the transactions examined at verification. Furthermore, petitioners maintain that Akai incorrectly allocated these expenses to specific transactions in its sales listing using volume, rather than value.

Akai argues that its packing expenses were neither systematically under- or over-stated. Akai further maintains that these expenses represent an insignificant part of total cost. Accordingly, Akai contends that, if the Department uses BIA to determine the amount of these expenses for purposes of the final determination, it should use the average expense reported.

DOC Position

We agree with petitioners that Akai incorrectly reported its packing material charges and marine insurance. Because of the significant number of transactions involved, as BIA, we have used the highest verified expense factors (*i.e.*, the expense expressed as a percentage of unit price) for packing and marine insurance and applied them to all of Akai's sales transactions.

We disagree with petitioners regarding packing labor. At verification we noted Akai's related party, which is responsible for packing the merchandise for export, had no employees dedicated to its packing operations and had no

packing labor costs separately identified in its accounting system. Thus, we found that any packing labor costs were likely to be negligible. Company officials stated that whatever incidental labor cost was incurred by the related party would be charged to Akai as part of the transfer price to Akai. Thus, we find that neither Akai nor its related party had any non-negligible or measurable packing labor cost and we find that the use of BIA is not warranted.

Comment 6

Petitioners argue that Akai failed to report bank charges and commissions, although the Department found at verification that Akai incurred them on each transaction reported in its U.S. sales listing.

DOC Position

We agree that Akai did not report its bank charges and commissions in its U.S. sales listing. However, contrary to petitioners' assertion, we noted at verification that Akai reported these charges as part of its cost response. Thus, Akai mistakenly misreported these expenses, rather than not reporting them at all. Because we typically consider these expenses to be direct selling expenses, we have reclassified them as such for purposes of the final determination. Accordingly, we calculated transaction-specific expenses for each of Akai's U.S. sales, using the data examined at verification. We then made the appropriate circumstances of sale adjustments to FMV to account for these charges.

Comment 7

Petitioners argue that Akai did not report the proper gross unit price in its U.S. sales database because it failed to account for exchange rate gains and loss. Petitioners contend that the prices for 100 percent of the sales reported do not represent the actual payment received by Akai. Therefore, they argue that these prices should not be used for purposes of the final determination.

According to Akai, however, the Department verified that it reported the correct transaction prices. Akai notes that the sales verification report states that there were "no discrepancies found in the amounts recorded in Akai's sales register and the amounts shown on Akai's final invoices received from the bank."

DOC Position

We disagree with petitioners that Akai should have reported exchange gains or losses in its U.S. sales. The Department's practice is not, and has

never been, to require respondents to report this type of adjustment. Moreover, the Department's questionnaire instructs respondents to report sales prices in the currency in which the sales are made. We determined at verification that Akai had accurately reported its U.S. sales prices in accordance with the questionnaire instructions (*i.e.*, in U.S. dollars because this is the currency in which Akai invoices its U.S. customers.) Accordingly, we have used these prices for purposes of the final determination.

Comment 8

Petitioners argue that the Department found at verification that Akai incorrectly reported its credit expenses, date of payment and direct and indirect selling expenses. Petitioners contend that the Department should not correct any of these discrepancies because collectively they are so extensive that correcting them would result in the creation of a significantly different questionnaire response.

DOC Position

We disagree, in part. We found at verification that Akai did misreport its payment period and direct and indirect selling expenses. However, we disagree that these errors are so egregious that correcting them would result in the creation of a new response. Accordingly, we have corrected these errors for purposes of the final determination, based on our findings at verification.

Comment 9

Echjay argues that it should be assigned the same dumping margin as Akai, rather than the "all others" rate. According to Echjay, Akai's rate is appropriate because Echjay's cost data forms the basis for Akai's margin. Echjay further notes that it cooperated fully in this investigation because it responded to each of the Department's request for information.

Petitioners maintain that the Department should apply the all other rate to all of Akai's subcontractors (including Echjay), because the Department does not have the information necessary to calculate company-specific margins for these companies for purposes of the final determination. Petitioner's further argue that the all other rate is also appropriate for Akai, because Akai is not the appropriate respondent in this investigation. (See Comment 1, above.) As the all other rate, petitioners assert that the Department should use the average of the margins contained in the petition. Petitioners reason that this is

the appropriate rate because, given the circumstances surrounding the application of adverse BIA to Mukand, it would be unfair to penalize other exporters for the behavior of an unrelated company

DOC Position

We disagree with Echjay. It is the Department's practice to assign the "all others" rate to companies who have not submitted responses to the Department's sales questionnaire. Absent a full questionnaire response, the Department does not have sufficient data with which to calculate a company-specific margin. While Echjay provided selected cost data, it elected not to provide data on its selling practices (*i.e.*, it chose not to submit a voluntary response). Consequently, we do not have any data upon which we could base USP for Echjay. We also note that the purpose of verification is not to collect such data. We disagree with Echjay that we could use Akai's data for this purpose as there is no evidence on the record that these data are representative of Echjay's selling practices. Accordingly, we have not assigned Echjay the same rate as Akai.

With regard to petitioners' argument that the Department should calculate the all other rate based on the average of the margins provided in the petition, we also disagree. It is the Department's practice to calculate the all other rate based on the margins assigned to the companies under investigation. Consequently, we calculated the all other rate in this case in accordance with our standard practice.

Comment 10

Petitioners claim that (1) Akai did not provide evidence that they used domestic raw materials for manufacturing the subject merchandise during the POI; (2) information on the record implies that Akai received less than the actual International Price Reimbursement Scheme (IPRS) claims submitted to the government; and (2) it was unclear whether the reimbursements received several months after the POI were earned on production during the POI. Accordingly, petitioners argue that the Department should disallow Akai's IPRS rebates entirely.

Akai argues that supporting documentation provided at verification demonstrated that domestic raw materials were purchased and used to manufacture the subject merchandise during that POI.

DOC Position

We disagree with petitioners. At verification, we determined that all raw materials used in manufacturing the subject merchandise were purchased from unrelated Indian suppliers. Since Akai sold the subject merchandise exclusively to the United States and because Akai used only domestic raw materials, all raw material inputs qualified under the IPRS government program.

The record clearly demonstrates that Akai was entitled to the reimbursement, that the total claim was approved by the Indian Government and Akai was in the process of collecting on these receivables. Even though the government reimbursements were received subsequent to the POI, the total reimbursement claim revenue reported during the POI was properly used to match revenue with the related raw material expenses incurred. Therefore, we have not disallowed these rebates for purposes of the final determination.

Comment 11

Based upon the results of a random sample taken at verification, petitioners claim Akai understated its COM. Consequently, petitioners argue that the Department should assume that all reported costs were understated by the largest variance determined from the random sample and should increase Akai's cost accordingly.

Akai states that the Department has sufficient data to make the cost adjustments deemed necessary

DOC Position

We disagree with petitioners. The largest variance accounts for one error, whereas the weighted-average adjustment represents all understatement errors in the sample. Therefore, Akai's COM was increased by the weighted-average of all understated COM variances found in the sample.

Comment 12

Petitioners argue Akai incorrectly reported its U.S. profit on a product-specific basis.

DOC Position

We agree. Under 18 CFR 353.50 (a)(2), the Department is required to use the profit on the class or kind of merchandise sold in the home market in calculating CV. Since there were no home market or third country sales, the statutory minimum profit of eight percent was applied.

Comment 13

Petitioners state that Akai incorrectly reported its quality controls costs as

direct selling expenses, rather than including them in the COM.

Akai states that the Department has sufficient data to make any adjustments deemed necessary.

DOC Positions

We agree with petitioners. Quality control costs are considered a cost of manufacturing. Additionally, there is no information on the record to support that this testing was a condition of sale. Therefore, we increased COM by the amount of quality control costs as a percent of the revised COM excluding this adjustment, and reduced direct selling expenses accordingly

Comment 14

Petitioners maintain that Akai incorrectly reported G&A costs by excluding depreciation expenses.

Akai states the Department has sufficient data to make the adjustment deemed necessary.

DOC Position

We agree with petitioners that depreciation expense on administrative fixed assets should be included in the reported G&A costs. Accordingly, we increased the submitted G&A by the amount of depreciation expenses reported in Akai's 1993 financial statement.

Comment 15

Petitioners contend that Akai underreported its raw material costs by failing to report commissions and brokerage charges

DOC Position

We disagree. During the cost verification we saw no evidence that Akai incurred commission and brokerage charges on raw materials. Consequently, we have made no adjustment for these charges for purposes of this final determination

Comment 16

Petitioners contend that the Department cannot rely on the information submitted by Akai's subcontractors because if found pervasive deficiencies in this information at verification. Accordingly, petitioners argue that the Department must resort to BIA for these costs, should the Department determine that it is appropriate to use them to calculate Akai's margin.

DOC Position

Because we have used the acquisition prices between Akai and its subcontractors, this issue is moot

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, we are directing the Customs Service to continue to retroactively suspend liquidation of entries of subject merchandise for Mukand, Sunstar, Bombay Forgings and Dynaforge. We are also directing Customs Service to retroactively suspend liquidation of all entries of subject merchandise for all other companies except Akai. Retroactive suspension will apply to entries of flanges from India that are entered, or withdrawn from warehouse, for consumption on or after May 7, 1993, which is the date 90 days prior to the date of publication of our preliminary determination in the **Federal Register**. For Akai, we are directing the Customs Service to continue to suspend liquidation of all entries of flanges from India, that are entered, or withdrawn from warehouse, for consumption on or after August 5, 1993, which is the date of our preliminary determination. The Customs Service shall require a cash deposit or the posting of a bond equal to the margins below on all entries of flanges from India. The suspension of liquidation will remain in effect until further notice. The estimated dumping margins are as follows:

Manufacturer/producer/exporter	Margin (percentage)
Mukand Ltd	210.00
Sunstar Metals Ltd	210.00
Bombay Forgings Pvt. Ltd	210.00
Dynaforge	210.00
Akai Impex Pvt. Ltd	19.74
All Others	162.44

International Trade Commission Notification

In accordance with Section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 45 days.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to Section 735(d) of the Act

(19 U.S.C. 1673d(d)), and 19 CFR 353.20(a)(4).

Dated: December 20, 1993.

Barbara Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-31669 Filed 12-28-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-583-821]**Final Determination of Sales at Less Than Fair Value: Certain Forged Stainless Steel Flanges From Taiwan**

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 29, 1993.

FOR FURTHER INFORMATION CONTACT: Pamela Ward, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-1174.

Final Determination

The Department of Commerce (the Department) determines that certain forged stainless steel flanges (flanges) from Taiwan are being, or likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of the preliminary determination on July 29, 1993 (58 FR 41716 (August 5, 1993)), the following events have occurred. On August 2, 1993, one of the respondents in this investigation, Ta Chen Stainless Pipe Co., Ltd. (Ta Chen), notified the Department that its subcontractors would not respond to the Department's cost of production (COP) questionnaire. In addition, on August 2, 1993, Ta Chen, requested a postponement of the final determination. We granted this request, and on August 11, 1993, we postponed the final determination until not later than December 20, 1993 (58 FR 44493 (August 23, 1993)).

On August 24, 1993, Ta Chen submitted its response to the Department's June 4, 1993, supplemental questionnaire.

On October 1, 1993, Ta Chen submitted a letter stating that it would not participate in verification and withdrew from this investigation.

On October 12 and October 13, 1993, respectively, petitioners and Enlin Steel Corporation (Enlin), another

respondent, submitted case briefs. On October 18 and October 20, 1993, respectively, petitioners and Enlin submitted rebuttal briefs.

Scope of Investigation

The products covered by this investigation are certain forged stainless steel flanges both finished and not-finished, generally manufactured to specification ASTM A-182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connections, threaded, used for threaded line connections, slip-on & lap joint, used with stub ends/butt-weld line connections, socket weld, used to fit pipe into a machined recession, and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above described merchandise are included in the scope. Specifically excluded from the scope of this investigation are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A-351. The flanges subject to this investigation are currently classifiable under subheading 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this investigation remains dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1992, through December 31, 1992.

Best Information Available

Enlin

In the preliminary determination, the Department determined that Enlin had been uncooperative in this investigation. The Department based this decision on the fact that Enlin did not file a response to sections B and C of the Department's questionnaire, due by April 23, 1993. In making this determination, the Department took into consideration that, on April 30, 1993, Enlin stated in writing that it would not be responding to the Department's questionnaire and requested a suspension agreement. (See Comment 1.) Section 776(c) of the Act provides that whenever a party refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, the Department shall use the best

information otherwise available (BIA). We have done so in this investigation.

Because Enlin refused to answer the Department's questionnaire, we find it has been uncooperative in this investigation. As BIA for Enlin, we are assigning the highest margin provided in the petition, in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding. The Department's two-tier methodology for assigning BIA based on the degree of respondent's cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit. (See *Allied-Signal v. U.S.*, Slip-Op. 93-049 (CAFC)(June 22, 1993) (*Allied*); see also *Krupp Stahl AG et al. v. U.S.*, Slip Op. 93-84 (CIT May 26, 1993).) The highest margin in the petition is 48.00 percent. (See Comment 1.)

Ta Chen

Ta Chen did not allow the Department to verify the information it submitted for the record in this investigation. In addition, Ta Chen withdrew from this investigation, stating that it no longer had an economic interest in the outcome of this proceeding. Section 776(b) of the Act provides that if the Department is unable to verify the accuracy of the information submitted, it shall use BIA as the basis for its determination, which may include the information submitted in support of the petition. Because Ta Chen's data was not verified, the Department must rely on BIA to determine Ta Chen's margin.

As BIA for Ta Chen, we are assigning the highest margin provided in the petition, in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding. Accordingly, because Ta Chen significantly impeded this investigation by not participating in verification and withdrawing from this proceeding, we are assigning the highest margin in the petition of 48.00 percent as BIA. (See Comment 2.)

Tay Precision

As detailed in the preliminary determination, Tay Precision requested proprietary treatment of its volume and value submission, but failed to provide a public version of its response. The Department informed Tay Precision that if a public version was not submitted that the Department would return its response. Because Tay Precision did not respond to the Department's request and

properly file a response to our questionnaire, on June 23, 1993, we returned its response in accordance with 19 CFR 353.32(d). We determined that the use of BIA is appropriate for Tay Precision Industries Co., Ltd. (Tay Precision) because it failed to provide the information requested in the form required. In deciding whether to use BIA, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required.

Consequently, we determined that it is appropriate to assign Tay Precision the highest margin contained in the petition, 48.00 percent, in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of flanges from Taiwan. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

In determining knowledge of dumping, we normally consider margins of 15 percent or more sufficient to impute knowledge of dumping for exporter's sales price sales, and margins of 25 percent or more for purchase price sales. (See, e.g., Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198, June 29, 1987.) Since the final margins for flanges from Taiwan for all parties are above 25 percent, we determine, in accordance with section 735(a)(3)(A)(ii) of the Act that knowledge of dumping existed for flanges from Taiwan.

Under 19 CFR 353.16(f) and 19 CFR 353.16(g), we normally consider the following factors in determining whether imports have been massive over a short period of time: (1) the volume and value of the imports; (2)

seasonal trends (if applicable); and (3) the share of the domestic consumption accounted for by imports.

As BIA for Enlin, Ta Chen, and Tay Precision we are making the adverse assumption that imports were massive over a relatively short period of time in accordance with section 735(a)(3)(B) of the Act.

Based on the above analysis, we determine that critical circumstances exist for imports of flanges from Taiwan for Enlin, Ta Chen, and Tay Precision. With respect to firms covered by the "All Other" rate, because the dumping margin is sufficient to impute knowledge of dumping, and because we have determined, as BIA, that imports of flanges have been massive over a relatively short period of time for the companies under investigation, we determine that critical circumstances also exist for "All Other" firms.

Interested Party Comments

Comment 1

Enlin maintains that the Department must select the less adverse second-tier BIA in assigning its final dumping margin because Enlin has exhibited a high level of cooperation with the Department. Enlin states that it provided a timely response to section A of the Department's questionnaire. In addition, when it informed the Department that it was unable to provide further questionnaire responses due to the prohibitive costs involved, Enlin indicated its desire to enter into negotiations for a suspension agreement with the Department. Furthermore, Enlin cites *Allied* as support because Enlin states that it continued to participate by offering to sign a suspension agreement. Additionally, Enlin asserts that it satisfies the requirements for a suspension agreement outlined in section 734 of the Act because it accounts for "substantially all" of U.S. imports of the subject merchandise during the POI.

Petitioners state that Enlin has refused to cooperate with the Department by refusing to respond to requests for information which are necessary for any margin calculation based on actual sales data. Petitioners contend that Enlin's offer to discuss a suspension agreement is not cooperation, because petitioners claim that Enlin knows that it does not meet the requirements for a suspension agreement.

Petitioners argue that this case is distinguishable from *Allied*. Unlike in this investigation, the respondent in *Allied* did not refuse to respond to the Department's questionnaire, but proposed that it supply a more

simplified response. Here, Enlin did not state that it could not adequately prepare questionnaire responses using the information it had, but rather stated that it could not justify the expense of collecting the information.

DOC Position

We agree with petitioners. The purpose of the BIA rule is to induce a noncomplying respondent to provide the Department with timely, complete, and accurate factual information. The courts have recognized that cooperation by the parties is essential for the Department to gather needed information, and that it cannot be left to the largesse of the parties at their discretion to supply the Department with information. See *Atlantic Sugar Ltd., v. U.S.*, 744 F.2d 1556, 1560 (1984); *Olympic Adhesives, Inc. v. U.S.*, 899 F.2d 1565, 1571 (Federal Cir. 1990).

The United States Court of Appeals for the Federal Circuit has held that the Department's two-tier methodology is a reasonable and permissible exercise of the Department's statutory authority to use BIA when a respondent refuses or is unable to provide requested information. (See *Allied* at page 15.) The Department's two-tier methodology for assigning BIA is based on the degree of a respondent's cooperation with the Department. In accordance with its first-tier, the Department imposes the most adverse margin rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding. In contrast, respondents who substantially cooperate but nonetheless fail to provide information requested in the required form and in a timely manner are subject to second-tier BIA.

Enlin argues that it should be deemed a cooperative respondent based on the Federal Appeal Court's decision in *Allied*. There the court found a second-tier cooperative BIA rate appropriate because the respondent had not refused to respond, but instead had demonstrated a willingness to work with the Department by submitting information it had to the extent it could (which was in a simplified manner). Enlin's situation is distinguishable. Unlike in *Allied* where the respondent indicated an interest in accommodating the Department's request by submitting information requested in a simplified manner, here Enlin simply refused to answer questionnaire sections B and C and made no other efforts to comply during the investigation. Unlike the respondent in *Allied*, Enlin stated on the record that, since U.S. exports of the subject merchandise were a "relatively minor part of Enlin's export business"

the resulting cost of preparing a full response could not be "economically justified." (See Enlin letter to the Department dated April 30, 1993.) Enlin made a calculated decision that it was not worth its time, effort, and expense. The Department will not find that refusing to answer a questionnaire can be construed as cooperating in an investigation. (See Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Argentina; et al., 58 FR 37062 (July 9, 1993).) Indeed, a recent court decision is analogous and lends support to our position. See *Yamaji Fishing Net Co. Inc., v. U.S.*, Slip. Op. 93-62 (CIT) (August 13, 1993) (Yamaji). In *Yamaji*, the court upheld an uncooperative BIA rate for a respondent who failed to submit its records in computer format, even though it did not maintain computer records. The court found that a mere letter from the respondent indicating it would not comply with information requests because it did not maintain computer records, and that therefore it would be too much of a burden in time and expense to put its records into computer format, was not a request for a waiver from the Department's requirement of submitting data in computer format.

Furthermore, the fact that Enlin evinced an interest to negotiate a suspension agreement with the Department is unlike the respondent's willingness in *Allied* to work out a simplified review process and is not indicative of a willingness to work with the Department in responding to our questionnaire. We cannot agree with Enlin that a party can merely request a suspension agreement from the Office of Antidumping Investigations (OAI) and be considered a cooperative party in an on-going proceeding. Enlin was specifically instructed in May 1993, by OAI officials to contact the Office of Agreements Compliance (OAC), the office which handles suspension agreements, regarding its request to enter into negotiations for a suspension agreement. However, Enlin never pursued further entering into a suspension agreement with either OAC or OAI officials, nor did Enlin ever submit a draft proposed agreement to either OAC or OAI officials as required by 19 CFR 353.18(g)(1)(i). Moreover, under 19 CFR 353.18 the Department has no affirmative obligation to initiate discussion of a possible suspension agreement.

Furthermore, in order to qualify for a suspension agreement, signatories of the agreement must account for substantially all the imports of the subject merchandise during the POI. Here, Enlin alone could not qualify because it does not account for "substantially all" of the imports to the United States. (See Memorandum to the File, dated November 23, 1993, and accompanied attachments for a detailed factual discussion.) Accordingly, we have continued to assign Enlin a rate based on first-tier BIA. As BIA we have used the highest rate in the petition.

Comment 2

Petitioners contend that because Ta Chen withdrew from this investigation and has refused to allow the Department to verify its information, that the Department must consider Ta Chen an uncooperative respondent. Petitioners add that Ta Chen's participation prior to its withdrawal should have no bearing on the selection of BIA. Petitioners cite the Final Determination of Sales at Less than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong 55 FR 30733 (July 27, 1990), where the Department assigned the highest margin in the petition because of a respondent's refusal to allow its data to be verified.

DOC Position

We agree. Because Ta Chen withdrew from the proceeding and did not allow the Department to verify its information submitted for the record of this investigation, the Department cannot rely on Ta Chen's data for the final determination. (See Section 776(b) of the Act.) Accordingly, we find that Ta Chen has significantly impeded this investigation and we have assigned Ta Chen the highest margin in the petition as adverse BIA.

Comment 3

Petitioners contend that the Department should use adverse BIA with respect to Tay Precision because the firm refused to provide information requested by the Department in proper form. Petitioners submit that the Department should use the two-tiered BIA methodology used in the preliminary determination and assign the highest margin alleged in the petition as BIA for Tay Precision. Furthermore, petitioners state that in the Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from

Argentina; et al., 58 FR 37062 (July 9, 1993) the Department found that refusing to answer questionnaires could not be construed as cooperating in an investigation. Furthermore, petitioners add that the BIA provision is intended to encourage responsiveness by the firms involved in an investigation, and Tay Precision's refusal to respond calls for the use of an adverse BIA rate.

DOC Position

We agree. As stated in our preliminary determination, we found that Tay Precision failed to provide the information requested in proper form as required by 19 CFR 353.32(b)(1) and 19 CFR 353.32(b)(2). Therefore, the Department returned information to Tay Precision pursuant to 19 CFR 353.32(d). Accordingly, we have continued to assign this company a rate based on first-tier BIA. As BIA we have used the highest rate in the petition.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4) of the Act, we are directing the Customs Service to continue to suspend liquidation for Enlin, Tay Precision and "All Others" and to retroactively suspend liquidation for Ta Chen of entries of flanges from Taiwan, that are entered, or withdrawn from warehouse, for consumption on or after May 7, 1993, which is the date 90 days prior to the date of publication of our preliminary determination in the *Federal Register*. The Customs Service shall require a cash deposit or the posting of a bond equal to the margins below on all entries of flanges from Taiwan. The suspension of liquidation will remain in effect until further notice. The estimated dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Enlin Steel Corporation	48.00
Ta Chen Stainless Pipe Co., Ltd.	48.00
Tay Precision Industries Co., Ltd.	48.00
All Others	48.00

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 45 days.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)), and 19 CFR 353.20(a)(4).

Dated: December 20, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-31668 Filed 12-28-93; 8:45 am]

BILLING CODE 3510-03-P

(A-351-819)

Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rods From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 29, 1993.

FOR FURTHER INFORMATION CONTACT: Jim Cunningham, Office of Antidumping Investigations, Import Administration, International Trade Administration; U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4207.

FINAL DETERMINATION: We determine that stainless steel wire rods from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since publication of the affirmative preliminary determination on August 5, 1993 (58 FR 41723), the following events have occurred.

On August 18, 1993, the Department sent Eletrometal-Metals Especiais SA (Eletrometal) a deficiency questionnaire. On September 7, 1993, Eletrometal responded to the deficiency questionnaire.

On September 13, 1993, the Department visited Eletrometal's facilities in Sumare, Brazil for verification. Also, on September 13, 1993, the Department notified Eletrometal that it was terminating verification because respondent had

omitted a significant number of sales from the sales listing it had submitted to the Department.

On October 26, 1993, Al Tech Specialty Steel Corp., Armco Stainless & Alloy Products, Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., and United Steelworkers of America, AFL-CIO/CLC (petitioners) and Eletrometal submitted case briefs. On November 1, 1993, petitioners submitted their rebuttal brief.

Scope of Investigation

For purposes of this investigation, certain stainless steel wire rods (SSWR) are products which are hot-rolled or hot-rolled, annealed, and/or pickled rounds, squares, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-sectional shape, annealed, and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1992, through December 31, 1992.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available (BIA) is appropriate for sales of subject merchandise in this investigation. In deciding whether to use BIA, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. In this case, the exporters of SSWR from Brazil did not do so. Consequently, we based our determination in this investigation on BIA.

We applied BIA to respondents in accordance with the two-tiered BIA methodology, under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding. The Department's two-tier methodology for assigning BIA based on the degree of respondents' cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit. (See *Allied-Signal Aerospace Co. v. the United States*, Slip Op. 93-1049 (Fed Cir. June 22, 1993); see also *Krupp Stahl AG. et al. v. the United States*, Slip Op. 93-84 (CIT May 26, 1993).)

Acos Finos Piratini SA and Acos Villares SA

During the course of this investigation, the Department encountered serious problems in obtaining from these two firms the volume and value data needed for its analysis. The Department attempted to solicit this information, stating that if we did not receive a response to our requests, we might make our determination on the basis of BIA. In spite of this attempt, we did not receive any information from either Acos Finos Piratini SA (Piratini) and Acos Villares SA (Villares), the two manufacturers and exporters named in the petition.

Since Piratini and Villares did not respond to our questionnaires, we used as BIA the highest margin contained in the January 15, 1993, pre-initiation amendment to the petition in this investigation, 26.50 percent.

Eletrometal

We did not use Eletrometal's response to the Department's questionnaire for purposes of our preliminary determination since it contained major deficiencies which could not be corrected in time for use in the preliminary determination. We gave Eletrometal the opportunity to correct the deficiencies in its response prior to verification. Because of the problems encountered at the verification of Eletrometal, we have used as BIA for this respondent the average of the margins contained in the January 15, 1993, pre-initiation amendment to the petition.

We terminated verification because at the start of our verification, Eletrometal informed the verifiers that it had omitted a significant portion of its home market sales from the sales listing it reported to the Department.

Moreover, in reaching our decision to terminate verification, we considered the fact that the Department had already afforded Eletrometal opportunities to

respond to three supplemental questionnaires in order to rectify deficiencies in its previous responses and that the time for making substantial revisions to questionnaire responses had passed.

We decided that, given these previous opportunities to rectify its responses, Eletrometal's admission that a significant percentage of sales were omitted from its home market sales database called into question the reliability and accuracy of its home market sales database and areas of its response affected by this database. The omission of these sales taints Eletrometal's entire database since it affects model matching, the calculation of differences in physical merchandise, and weighted-average home market expenses. Even if Eletrometal had provided a corrected sales database at verification, the untimely submission of such a substantial amount of data would not have allowed the Department an adequate opportunity to analyze it prior to attempting to verify its accuracy.

Despite Eletrometal's deficiencies, we consider it a cooperative respondent. In reaching this determination, we have considered Eletrometal's deficiency responses and other attempts to comply with our requests for information. While Eletrometal's responses were inadequate and unreliable for purposes of our investigation, these problems do not appear to have stemmed from a deliberate attempt to deceive the Department. We have also considered the fact that Eletrometal volunteered the omitted sales at the start of verification and that it provided a reasonable explanation for its error. For Eletrometal, therefore, we have used, as BIA for a cooperating respondent, the average of the margins contained in petitioners' January 15, 1993, amendment to the petition, 24.63 percent.

Critical Circumstances

Petitioners alleges that "critical circumstances" exist with respect to imports of the subject merchandise from Brazil. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise

which is the subject of the investigation over a relatively short period.

Under 19 CFR 353.16(f), we normally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports, if such data is available.

In determining knowledge of dumping, we normally consider margins of 15 percent or more sufficient to impute knowledge of dumping under section 735(a)(3)(A)(ii) of the Act for exporters sales price sales, and margins of 25 percent or more for purchase price sales. (See, e.g., *Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy*, 52 FR 24198, June 29, 1987).

Since the margins for SSWR from Brazil for Piratini and Villares are above 25 percent, we determine in accordance with section 735(a)(3)(A)(ii) of the Act that importers had knowledge of dumping of SSWR by these companies. Since Piratini and Villares have not responded to our questionnaire, we are making the adverse assumption, as BIA, that imports from Piratini and Villares were massive over a relatively short period of time in accordance with section 735(a)(3)(B) of the Act. Based on this analysis, we find that critical circumstances exist for imports of SSWR from Brazil for Piratini and Villares.

Since all of Eletrometal's sales to the United States are purchase price sales, and the margin assigned to Eletrometal is less than 25 percent, we determine that importers did not have knowledge of dumping of SSWR by Eletrometal. Furthermore, no allegation has been made that there is a history of dumping in the SSWR industry. Since the first prong of the critical circumstances test is not met for Eletrometal, it is not necessary to examine whether there have been massive imports of SSWR over a relatively short period. Therefore, we find that critical circumstances do not exist with respect to Eletrometal.

Because we have not found that critical circumstances exist with respect to all respondents, we also do not find that critical circumstances exist with respect to all other exporters and producers of subject merchandise from Brazil.

Analysis of Comments Received

Comment 1.

Petitioners argue that Eletrometal failed verification and should, therefore,

be assigned a margin based on BIA. Petitioners state that given the problems with Eletrometal's data during the course of this investigation and its failure to complete verification, the Department should use a BIA margin of 26.50 percent for Eletrometal for this determination.

DOC Position

We agree in part. While we agree that early termination of Eletrometal's verification warrants the use of BIA, as stated above, we consider Eletrometal a cooperative respondent. For the reasons stated above, we have used, as BIA for a cooperating respondent, the average of the margins contained in petitioners' January 15, 1993, amendment, 24.63 percent.

Comment 2

Petitioners argue that the Department should find that critical circumstances exist with respect to imports from all exporters. They state that since Piratini and Villares did not respond to the Department's questionnaire, the Department must affirm its preliminary finding that imports from these two companies were massive over a relatively short period of time. They further state that since Eletrometal failed verification, and, since the integrity of its response and all the data contained in the response is unreliable, the Department should find that critical circumstances exist with respect to Eletrometal also.

DOC Position

We agree in part. While we agree with petitioners' statement that critical circumstances exist with respect to Piratini and Villares, we disagree that critical circumstances exist with respect to Eletrometal.

Since petitioners have not alleged a history of dumping in the SSWR industry, and since all of Eletrometal's sales to the United States are purchase price sales and the margin assigned to Eletrometal is less than the 25 percent threshold at which the Department will impute knowledge of dumping in purchase price situations, we have determined that critical circumstances do not exist with respect to Eletrometal.

Comment 3

Eletrometal argues that the Department should have accepted its additional sales prior to or at the start of verification. Eletrometal states that there is no regulatory provision that prohibits the Department from accepting additional information prior to verification and that the Department should not penalize Eletrometal for

omitting these sales from its responses to the Department's questionnaire. Eletrometal explains that the omission of these sales was due to an administrative error at the time of preparing its questionnaire response and that a list of the omitted sales was presented to the Department at the start of verification. It also states that the Department has no basis to reject this information on grounds that Eletrometal has not cooperated with the Department's investigation.

Eletrometal argues that the Department regularly accepts corrected information after verification and cites *Monsanto Co. v. United States*, 698 F. Supp. 275 (CIT 1988). Eletrometal also argues that the Court of International Trade (CIT) has held that the Department enjoys considerable discretion not to verify every piece of information regarding a respondent's sales. It also argues that Congress intended that the Department have latitude in its verification procedures and, in support, cites *Kerr-McGee Chemical Corp. v. United States*, 739 F. Supp. 613 628 (CIT 1990).

DOC Position

We disagree with respondent. The omitted sales in question were never properly reported, even at verification. It was only at verification that the Department was informed of their existence, provided company reports illustrating these sales and given the percentage of home market sales represented by these omitted transactions. While Eletrometal did provide a list of sales that were omitted, this list was presented at the end of the verification. Under 19 CFR 353.31(a)(i), the deadline for submitting factual information is seven days before the scheduled date on which the verification is to commence, unless the Department requests such factual information. The Department did not request this information. Moreover, the information Eletrometal presented did not include information, such as control numbers, product codes, payment terms, taxes, movement expenses, and selling expenses, which were requested by the Department in the antidumping questionnaire. Thus, with regard to Eletrometal's argument that the Department should have accepted additional sales that it submitted at verification, the Department cannot accept information that has not been properly submitted in a timely fashion.

Moreover, the Department's three deficiency letters provided ample opportunities for Eletrometal to adequately examine the accuracy of the sales listings that it had submitted.

While we agree that Eletrometal has cooperated with the Department's investigation, Eletrometal's omission of such substantive data calls into question the reliability and accuracy of Eletrometal's home market sales database and areas of its response affected by this database. Moreover, the late submission of such substantive data would not have allowed the Department an adequate opportunity to analyze it prior to verification.

Unlike the situation in *Monsanto Co. v. United States*, the information omitted by Eletrometal neither corrected nor clarified information submitted in the original questionnaire response. The omitted information was not in support of previously submitted information but pertained to additional sales independent of existing data. Furthermore, while Congress and the CIT have granted the Department considerable latitude in its verification procedures, this discretion is granted because of the impracticability of examining all of a company's information at verification, not to require the Department to verify any and all new information provided at verification.

Comment 4

Eletrometal states that the Department should not have cancelled verification simply because respondent disclosed additional home market sales at the start of verification. Eletrometal states that even if the Department refused to accept the sales information that it presented at the start of verification, the Department was unjustified in cancelling the entire verification. Respondent also argues that the Department would have been able to verify the great majority of home market sales that it reported and that the Department could have chosen to apply BIA only to those sales that had been omitted from Eletrometal's questionnaire response.

Eletrometal argues that the Department's decision to cancel verification is inconsistent with its prior practice. It cites *Bicycle Speedometers from Japan* (58 FR 42,289) (August 9, 1993,) and *Light-Walled Welded Rectangular Carbon Steel Tubing from Argentina* (54 FR 13,913) (April 6, 1989) (*Argentine Tubing*), in which the Department discovered unreported sales during the verifications.

Petitioners argue that as late as the issuance of the Department's preliminary determination, Eletrometal's responses were seriously deficient. Petitioners also state that in an effort to provide Eletrometal every opportunity to comply with its requests, the Department indicated it would

verify Eletrometal's responses. Petitioners further state that when it became clear at verification that the responses were not complete, the Department properly terminated verification. Petitioners also refute Eletrometal's interpretation of the Department's prior practice.

DOC Position

We agree with petitioners. The Department provided ample opportunity for Eletrometal to properly and fully report its sales data. While the Department may well have been able to verify some of respondent's data, Eletrometal's omission of a significant amount of data casts doubts over the completeness and the reliability of Eletrometal's home market sales database and areas of its response affected by the database.

With regard to the Department's prior practice concerning unreported sales at verification, the cases cited by Eletrometal are not contrary to the position taken by the Department in this case. The verification in Bicycle Speedometers from Japan took place in the context of an administrative review of an order which had been previously verified. Thus, the Department already had an understanding of the overall extent of respondent's sales. Furthermore, the volume of unreported sales involved in that verification was not specified.

Respondent's reliance on Argentine Tubing is also misplaced. Although the Department's analysts did continue verification after the respondent submitted a new home market sales listing at the verification site, the analysts did so only "after warning [respondent] that the Department was not likely to accept such a massive revision this late in an investigation." Argentine Tubing at 13914. In fact, the Department did reject this new database, and relied totally on BIA at the final determination, noting the "[w]hile the Department allows minor revisions to questionnaire responses after the preliminary determination and during verification, it is well-established Department policy not to accept new responses after the preliminary determination because at that point in an investigation there is insufficient time for the Department to analyze and verify properly the new information." Id. at 13915.

If anything, Argentine Tubing is a case study in the futility of attempting the verification of substantial late home market database changes with the attendant impact on product matches, difmers, etc., not a policy statement that

verification must be continued under such conditions.

Comment 5

Eletrometal states that prior to the start of verification, it disclosed inventory carrying costs. Eletrometal states that if these inventory carrying costs were added, they would decrease the home market price.

Petitioners argue that Eletrometal's claim regarding inventory carrying costs is irrelevant because all of Eletrometal's U.S. sales are purchase price sales, and the Department's purchase price methodology does not involve any treatment of inventory carrying costs. Petitioners also state that any addition to home market price would increase, not decrease, the home market price and its margin of dumping.

DOC Position

This issue is moot since the Department is using an assigned BIA margin rather than a calculated margin in this investigation.

Suspension of Liquidation

In accordance with section 735(c)(4) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of certain stainless steel wire rods from Brazil manufactured or exported by Piratini or Villares that are entered, or withdrawn from warehouse, for consumption on or after May 7, 1993, which is 90 days prior to the date of publication of our preliminary determination in the Federal Register. We are directing the Customs Service to continue to suspend liquidation of all entries of certain stainless steel wire rods from Brazil manufactured or exported by Eletrometal and all other manufacturers that are entered, or withdrawn from warehouse, for consumption on or after August 5, 1993, which is the date of publication of our preliminary determination in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the margins listed below on all entries of SSWR from Brazil. This suspension of liquidation will remain in effect until further notice. The estimated dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Eletrometal—Metals	
Especiais S.A.	24.63
Acos Finos Piratini SA	26.50
Acos Villares SA	26.50
All Others	25.88

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of our determination. The ITC will make its determination whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on SSWR from Brazil entered or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market exceeds the United States price.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: December 20, 1993.
 Barbara R. Stafford,
 Acting Assistant Secretary for Import Administration.
 [FR Doc. 93-31670 Filed 12-28-93; 8:45 am]
 BILLING CODE 3510-06-P

[A-427-811]

Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
 EFFECTIVE DATE: December 29, 1993.
 FOR FURTHER INFORMATION CONTACT: John Beck, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-3464.

Final Determination

We determine that certain stainless steel wire rods from France are being, or

are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our preliminary determination on July 28, 1993 (58 FR 41726, August 5, 1993) and the postponement of our final determination on August 18, 1993 (58 FR 44660, August 24, 1993), the following events have occurred:

On August 9, 1993, Al Tech Specialty Steel Corp., Armco Stainless & Alloys Products, Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc. and the United Steelworkers of America, AFL-CIO/CLC (collectively petitioner) requested that a public hearing be held. On August 12 and 31, 1993, Imphy, S.A. (Imphy), Ugine-Savoie, Metalimphy Alloys Corp. (MAC) and Techalloy Company, Inc. (Techalloy) (collectively respondent) requested that a public hearing be held.

In September 1993, respondent submitted revised home market and U.S. sales listings, supplemental section D and E questionnaire response information, and corrections and/or revisions to its submissions. Respondent also attempted to submit additional sales in late October 1993.

We conducted verification of respondent's sales and cost questionnaire responses in France in late September and early October 1993, and in the United States in mid-October 1993. In November 1993, respondent submitted revised sales listings to correct for errors discovered at verification.

Case and rebuttal briefs were submitted by petitioner and respondent on November 17 and 24, 1993, respectively. A public hearing was held on November 29, 1993.

Scope of Investigation

For purposes of this investigation, certain stainless steel wire rods (SSWR) are products which are hot-rolled or hot-rolled annealed, and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed, and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this investigation is currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1992, through December 31, 1992.

Such or Similar Comparisons

We have determined that the product covered by this investigation comprises a single category of "such or similar" merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of: (1) Grade; (2) diameter; (3) further manufacturing. We made adjustments for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of SSWR from France to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP for some U.S. sales on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales price (ESP) methodology, in those instances, was not otherwise indicated. We accepted all of respondent's classifications of purchase price sales (see Comment #1 in the Interested Party Comments section of this notice). We excluded certain U.S. sales with zero prices or zero quantities because these sales constituted an insignificant portion of total U.S. sales.

In addition, where certain sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

For purchase price and ESP sales, we made deductions, where appropriate, for discounts and the following

movement charges: foreign brokerage, foreign inland freight, marine insurance, ocean freight, U.S. brokerage, U.S. duty, and U.S. inland freight. We added amounts for billing adjustments and freight revenue.

For both purchase price and ESP sales, we re-calculated credit for those sales that had missing payment or shipment dates. As best information available (BIA), we used the date of the final determination for the missing payment dates, and the date of sale for the missing shipment dates (see Comment #8 in the Interested Party Comments section of this notice). In addition, we added an additional amount to brokerage charges to account for an understatement of this expense discovered at verification (see Comment #6 in the Interested Party Comments section of this notice). Furthermore, we have reclassified inventory carrying costs as credit expenses for consignment sales (see Comment #5 in the Interested Party Comments section of this notice).

For ESP sales only, we deducted commissions, direct U.S. selling expenses, including credit expenses, warranty expenses, and warehousing, other direct non-U.S. selling expenses, indirect selling expenses, inventory carrying costs, and premiums for product liability insurance. For further manufacturing sales, we deducted the amount of general and administrative (G&A) expenses included in indirect selling expenses, since these G&A expenses were included in respondent's cost of production. (See Comment #15 of the Interested Party Comments section of this notice.)

In addition, we made deductions, where appropriate, for all value added in the United States pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with further manufacturing the imported product, including a proportional amount of any profit. We calculated profit attributable to further manufacturing in the United States by deducting from the sales price all applicable costs incurred in producing the further manufactured product. We then allocated the total profit proportionally to all components of cost. We deducted only the profit attributable to the value added in the United States. In determining the costs incurred to produce the further manufactured products, we included (1) the costs of manufacture; (2) movement and packing expenses; and (3) general, selling and administrative expenses, and (4) interest expenses. We adjusted respondent's further manufacturing cost data for certain G&A expenses which respondent had excluded in its

response. This adjustment was specific to each further manufacturing facility. For those sales of further manufactured merchandise where respondent did not specify the facility of further manufacture, we made this adjustment by using the highest G&A rate applied to any facility as BIA.

For price-to-price comparisons only, we made an adjustment to U.S. price for the value-added tax (VAT) paid on the comparison sale in France. In *Federal-Mogul Corporation and The Torrington Company v. United States*, Slip Op. 93-194 (CIT October 7, 1993), the Court of International Trade (CIT) rejected our revised implementation of the Act's instructions on taxes (our implementation was demonstrated in the preliminary determination in this investigation) and prohibited us from applying a purely tax neutral margin calculation methodology. Accordingly, we have again changed our practice, as instructed by the CIT, and adjusted U.S. price for tax by multiplying the home market tax rate by the U.S. price at the point in the chain of commerce of the U.S. merchandise that is analogous to the point in the home market chain of commerce at which the foreign government applies the home market consumption tax.

In this investigation, the tax levied on the subject merchandise in the home market is 18.6 percent. We calculated the appropriate tax adjustment to be 18.6 percent of U.S. price net of adjustments reflected on the invoice at the time of sale (which, in this case, is the point in the chain of commerce of the U.S. merchandise that is analogous to the point in the home market chain of commerce at which the foreign government applies the home market consumption tax), and added this amount to the U.S. price. We also calculated the amount of the tax adjustment that was due solely to the inclusion of price deductions in the original tax base (i.e., 18.6 percent of the sum of any adjustments, expenses and charges that were deducted from the tax base). We deducted this amount from the net U.S. price after all other additions and deductions had been made. By making this additional tax adjustment, we avoid a distortion that would cause the creation of a dumping margin even when pre-tax dumping is zero.

Respondent reported additional sales to the Department on October 15, 25 and 28, 1993. These sales were submitted too late to be included in our analysis. (See Comment #2 in the Interested Party Comments section of this notice.) We also discovered that the cost of further manufacturing data did not include

costs associated with certain further manufactured sales of MAC. Consequently, we were unable to adjust the prices of these sales for their further manufacturing costs. As BIA, we have assigned these sales the higher of either: (1) the average of all margins alleged in the petition for the relevant class or kind of merchandise; or (2) the highest non-aberrant calculated margin for any other sale of merchandise.

Foreign Market Value

We compared the volume of home market sales of SSWR to the volume of third country sales in accordance with 19 CFR 353.48(a) to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV. We found that the home market was viable for sales of SSWR.

We used the Department's related party test to determine whether sales to related customers were made on an arm's-length basis. See Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37077, July 9, 1993) for more information on the Department's related party test. We did not include in our price-to-price comparisons any sales to related customers that we determined were not at arm's-length.

Cost of Production

Petitioner alleges that respondent's home market sales of SSWR were made at prices below cost of production (COP). On the basis of petitioner's allegations, we gathered data on production costs. We compared the weighted-average home market prices to the COP.

If over 90 percent of respondent's sales of a given model were at prices equal to or greater than the COP, we did not disregard any below-cost sales because we determined that respondent's below-cost sales were not made in substantial quantities. If between ten and 90 percent of respondent's sales of a given model were at prices equal to or greater than the COP, we disregarded only the below-cost sales, if they were found to be made over an extended period of time. Where we found that more than 90 percent of respondent's sales were at prices below the COP, we disregarded all sales for that model and calculated FMV based on constructed value (CV), if those sales were made over an extended period of time. We disregarded below-cost sales because the respondent failed to demonstrate, as requested by the Department in the COP

questionnaire, that those below-cost sales were made at prices permitting the recovery of all costs within a reasonable period of time in the normal course of trade.

In order to determine whether below-cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: (1) If respondent sold a product in only one month of the POI and there were sales in that month below the COP, or (2) if respondent sold a product during two months or more of the POI and there were sales below the COP during two or more of those months, then below-cost sales were considered to have been made over an extended period of time.

In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of respondent's cost of materials, fabrication, selling, general and administrative (SG&A) expenses, and interest expenses. We compared home market selling prices, net of movement charges and discounts and rebates, to each product's COP.

Price-to-Price Comparisons

For those products for which there are an adequate number of sales at prices equal to or greater than the COP, we based FMV on home market prices. For the subject merchandise, we calculated FMV based on delivered prices, inclusive of packing and VAT, to unrelated customers in the home market and to related customers, sales to which are at arm's-length under the related party test. We deducted inland freight, inland insurance, discounts and rebates from these prices. We added home market interest revenue to these prices. We also deducted home market packing costs and added U.S. packing costs. We re-calculated credit for those sales that had missing payment or shipment dates. As BIA, we used the date of the final determination for the missing payment dates, and the date of sale for the missing shipment dates.

For comparisons involving both purchase price and ESP, we included in FMV the amount of the VAT collected in the home market. We also calculated the amount of the tax that was due solely to the inclusion of price deductions in the original tax base (i.e., 18.6 percent of the sum of any adjustments, expenses, charges and offsets that were deducted from the tax base). We deducted this amount from the FMV after all other additions and deductions had been made. By making this additional tax adjustment, we avoid a distortion that would cause the

creation of a dumping margin even when pre-tax dumping is zero.

For purchase price comparisons, pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments for credit expenses and warranties, where appropriate. We deducted home market indirect selling expenses from FMV, capped by the amount of the U.S. commission. In addition, we re-calculated a re-adjustment of the amount of tax on the U.S. direct selling expenses added to FMV by applying the tax rate to those expenses. We also added this re-adjustment to FMV.

For ESP comparisons, we deducted home market indirect selling expenses from FMV, capped by the sum of U.S. indirect selling expenses and the U.S. commission amount. Although respondent reported related party commissions in the home market, respondent has not claimed them as direct selling expenses and, instead, included these expenses in indirect selling expenses.

For ESP comparisons, where there were no U.S. commissions, we offset the indirect selling expenses in the United States by providing for a corresponding deduction for indirect selling expenses in the home market, capped by the total indirect selling expenses incurred on the U.S. sale in the comparison.

Constructed Value

For those products without an adequate number of sales at prices above the COP, we based FMV on CV. We calculated CV based on the sum of the cost of materials, fabrication, general expenses, and U.S. packing cost. We included the respondent's reported general expenses in CV since these expenses were greater than the statutory minimum of ten percent of the cost of manufacture (COM). We re-calculated the weighted-average profit from the adjusted home market net sales prices and reported COPs. Since this amount was greater than the statutory minimum of eight percent of the COM, we used the re-calculated profit for CV.

For purchase price comparisons, we made circumstance-of-sale adjustments for differences in credit and warranty expenses, where appropriate. We deducted home market indirect selling expenses from FMV capped by the amount of the U.S. commission. For ESP comparisons, we deducted home market indirect selling expenses capped by the sum of U.S. indirect selling expenses and the U.S. commission amount. Although respondent reported related party commissions in the home market, respondent has not claimed them as direct selling expenses and, instead,

included these expenses in indirect selling expenses.

For ESP comparisons, where there were no U.S. commissions, we offset the indirect selling expenses in the United States by providing for a corresponding deduction for indirect selling expenses in the home market, capped by the total indirect selling expenses incurred on the U.S. sale in the comparison.

Final Determination of Critical Circumstances

We find that critical circumstances do not exist with respect to imports of SSWR from France, in accordance with section 735(a)(3) of the Act. To determine whether or not there have been massive imports of SSWR, we compared the export volume for the five months subsequent to the filing of the petition to that for the five months prior to the filing of the petition. We found that exports of this merchandise from respondent during the period subsequent to receipt of the petition had decreased. Unless we find that imports of the subject merchandise were massive, we do not need to determine whether there is a history of dumping in the United States or elsewhere or whether there is knowledge that the exporter was selling the merchandise at less than its fair value.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondent by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1: In the preliminary determination, the Department treated certain U.S. sales as purchase price sales. We treated these sales as purchase price sales because respondent claimed that they were sales of merchandise that was produced to specification, sold prior to importation, and was not available for sale to other customers (see the July 16, 1993, memorandum from team to Richard Moreland).

Petitioner argues that the Department should reclassify these sales as ESP transactions. First, petitioner claims that although the sales in question were made prior to importation, respondent nonetheless warehoused or

"inventoried" the merchandise before it shipped it to its customers. Second, petitioner argues that direct shipments to the unrelated buyer are not in the normal commercial channel of sale for respondent and that most sales of SSWR from France are inventoried by MAC. Third, petitioner argues that MAC's sales activities extend well beyond a communication link or processor of sales-related documents. Consequently, petitioner argues that the sales in question, along with sales that are not warehoused in the United States and are shipped directly from France to the U.S. customer, should be classified as ESP sales.

Respondent maintains that the Department found no evidence of significant U.S. market activity by MAC at verification. Respondent argues that there is no merit to petitioner's assertions that warehousing by MAC after importation precludes the finding that such sales are purchase price sales. Respondent contends that its sales are always made-to-order, are always sold prior to importation, and are never available for sale to other customers or out of pre-existing inventory.

DOC Position: We agree with respondent and have treated these sales as purchase price sales based on the use of the three purchase price/ESP criteria set forth in the Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland (56 FR 56363, November 4, 1991). In that case, the Department stated that where the terms of sale are set prior to the date of importation, the Department would examine several additional criteria when making a decision as to whether a sale should be considered as purchase price or ESP. As a result, we classify a sale as purchase price if the following criteria are met.

The first criterion is that the merchandise in question is shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent. The second criterion is that this arrangement is the customary commercial channel for sales of this merchandise between the parties involved.

First, we should note that not all sales classified as purchase price sales were warehoused by the U.S. subsidiary. Instead, they were shipped directly from France to the unrelated customer.

For the remaining sales that respondent classified as purchase price, the merchandise is warehoused by the related U.S. selling agent but not inventoried. The term "inventory", as it is commonly used in business, implies that the merchandise is in storage and

is available for sale. We determined at verification that, with regard to the sales in question, the merchandise is not available for sale to any customer. Instead, the merchandise is considered as being warehoused, as it is awaiting delivery to a specific customer. Consequently, petitioner's arguments concerning the merchandise being inventoried, and that this is the customary commercial channel for sales of the subject merchandise, are not applicable.

The third criterion is that the related selling agent located in the United States acts only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer. No information submitted on the record, or found at verification, shows that MAC advertises or provides in-house technical services, although it does indicate that MAC participates in sales negotiations and takes title to the merchandise. At verification, the team tried to determine the extent to which MAC sets the terms of sale. Based on information gathered at verification, we have determined that MAC does not have the flexibility to set the price or terms of sale and acts only as processor of sales-related documentation. Therefore, we have determined that these sales are purchase price sales and have treated them as such.

Comment 2: On October 15 and 25, 1993, respondent submitted sales that, until those dates, had omitted from its response. One of the sales submitted on October 15 was a sample transaction.

Petitioner argues that the Department should use BIA to derive dumping margins for all U.S. sales first reported on October 25, 1993. Petitioner claims that these sales were submitted untimely and that respondent had several opportunities to report these sales in a timely manner in revisions made to its sales database. As BIA, petitioner states that the Department should use "the higher of the average margin in the petition for the relevant class or kind of merchandise, or the highest non-aberrant calculated margin," as was done in the Certain Hot-Rolled, Cold-Rolled, Corrosion-Resistant and Cut-to-Length Carbon Steel Flat Products Investigations from France (58 FR 37125, July 9, 1993) (Carbon Steel Products from France).

Respondent maintains that there is no reason to exclude these sales in the final determination. Respondent points out that the sales in question represent a very minor portion of the U.S. database and were reported as soon as they were discovered. Respondent maintains that it was faced with a formidable task of reporting subject sales, and these

particular sales were omitted in prior submissions due to an isolated computer error.

Respondent maintains that it has cooperated fully with the Department's investigation. Respondent states that the Department fully verified the volume and expenses associated with the additional sales reported. Respondent further states that if the Department decides that BIA is warranted for these sales, the most appropriate BIA would be to exclude these sales from the Department's analysis. Alternatively, respondent states that the Department should use a weighted-average margin from all of the other sales as BIA.

DOC Position: We agree with petitioner and have applied BIA margins to these unreported sales (see United States Price section of this notice). We have determined that these sales constitute a significant portion of total U.S. sales. According to 19 CFR 353.31(a)(1)(i), submissions of factual information must be made no later than seven days before the scheduled date on which verification is to commence. Here, respondent did not meet this deadline. As BIA, we assigned these sales the higher of either: (1) The average of all margins alleged in the petition for the relevant class or kind of merchandise; or (2) The highest non-aberrant calculated margin for any other sale of merchandise. This use of BIA is consistent with that used in Carbon Steel Products from France, where the facts of the case were similar.

Comment 3: Petitioner argues that the Department, as BIA, should disallow any difference in merchandise (difmer) adjustments claimed by respondent that reduce foreign market value, or resort to the next most costly home market product grouping for comparison to U.S. sales where dissimilar sales must be compared. Petitioner states that there is no evidence on the record to demonstrate that respondent's difmer adjustments relate only to physical characteristics of the merchandise. Petitioner asserts that respondent has stated that it incorporates non-physical characteristics into its product coding system and has failed to state or to prove that the difmers exclude cost differences resulting from non-physical differences in the products.

Respondent argues that it adhered to the Department's methodology for making difmer adjustments and has demonstrated that the cost differentials, which were the basis for the difmer adjustments relate to physical differences in the merchandise. Respondent states that the Department's questionnaire instructed respondent to provide information on physical

differences between the U.S. and home market merchandise, as well as differences in costs of materials, labor and variable production overhead for producing the merchandise. Respondent states that difmer adjustments for similar products were based on the variable costs for producing the merchandise. Respondent further states that its product codes, which were relied upon in identifying identical and similar matches, include the production process and end-use of the merchandise. Respondent argues that there can be no separation between production process and end-use from physical characteristics and that the production process and end-use are directly related to and result in physical differences in the products.

DOC Position: We agree with respondent. The Department verified that the matching of U.S. and home market products was, in fact, done pursuant to the guidelines established in Appendix V of the Department's questionnaire. At Ugine-Savoie, we verified that certain Ugine-Savoie products contained non-metallic physical properties which distinguished them from similar products with the same metallic composition. At respondent's company, we verified that certain products had different chemical properties, including metallic properties, which were more specific and inclusive than the basic criteria established in Appendix V of the questionnaire. These physical characteristics, such as the precise percentage of aluminum, were reflected in the product code precisely because the end-use for the wire rod would require specific physical composition of the product (e.g., percentages of nickel, copper, aluminum, etc. determine whether the rod is best suited for future cold-heating, fine wire drawing, welding, etc.).

The accounting team verified that the costs reported were based on the processes used for specific heats. The specific processes of a heat would depend on the physical characteristics desired for the finished product and, in some cases, the size of orders and the corresponding capacity of the production sites; some costs then might relate to a process (such as which particular furnace was used) based on aspects not absolutely related to the exact physical characteristics of the finished product. Considering the volume and complexity of the heats processed during the POI and the nature of the respondent's accounting system, the reliance on heat-specific costs was a reasonable measure; based on the facts specific to this case, requiring

respondent to retroactively calculate and eliminate any processing costs which related to the specific size or timing of a heat would represent an unreasonable burden on respondent.

We therefore used the reported difmer adjustments in calculating the dumping margin for purposes of the final determination.

Comment 4: Petitioner asserts that in accordance with the decision of the appellate court in *Zenith Electronics Corp. v. United States*, the Department should eliminate its circumstance of sale adjustment for VAT without any further adjustments to USP. Petitioner claims that the Department's current practice of adding to USP the absolute amount of tax assessed on the comparison merchandise sold in the country of exportation is contrary to the holding of the appellate court in the 1993 *Zenith* decision and has been rejected by the CIT in several other cases. Petitioner believes that the statute requires the adjustment to be based on the amount of tax that would have been applied to the U.S. sale.

Respondent argues that the Department properly adjusted for VAT on the U.S. side. Respondent contends that the Department's methodology is not precluded by statute or recent court holdings. Respondent states that the *Zenith* decision requires the Department to increase USP for the amount, instead of the rate, of the ad valorem tax and that the statute does not permit the Department to make a circumstance-of-sale adjustment for any residual distortions in the dumping margin caused by the adjustment of USP. Respondent further argues that the *Zenith* decision acknowledged that the Department has the authority and the ability to make tax-neutral assessments by adding the amount of home market taxes to USP.

DOC Position: On October 7, 1993, the CIT, in *Federal-Mogul Corp. and The Torrington Co. v. United States*, Slip Op. 93-194 (CIT, October 7, 1993), rejected the Department's methodology for calculating an addition to USP under section 772(d)(1)(C) of the Act to account for taxes that the exporting country would have assessed on the merchandise had it been sold in the home market. The CIT held that the addition to USP under section 772(d)(1)(C) of the Act should be the result of applying the foreign market tax rate to the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. *Federal-Mogul*, Slip Op. 93-194 at 12.

The Department has changed its methodology in accordance with the *Federal-Mogul* decisions, and has applied this new methodology in making its final determination in this investigation. From now on, the Department will add to USP the result of multiplying the foreign market tax rate by the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. The Department will also adjust the USP tax adjustment and the amount of tax included in FMV. These adjustments will deduct the portions of the foreign market tax and the USP tax adjustment that are the result of expenses that are included in the foreign market price used to calculate foreign market tax and are included in the United States merchandise price used to calculate the USP tax adjustment and that are later deducted to calculate FMV and USP. These adjustments to the amount of the foreign market tax and the USP tax adjustment are necessary to prevent our new methodology for calculating the USP tax adjustment from creating antidumping duty margins where no margins would exist if no taxes were levied upon foreign market sales.

This margin creation effect is due to the fact that the bases for calculating both the amount of tax included in the price of the foreign market merchandise and the amount of the USP tax adjustment include many expenses that are later deducted when calculating USP and FMV. After these deductions are made, the amount of tax included in FMV and the USP tax adjustment still reflects the amounts of these expenses. Thus, a margin may be created that is not dependent upon a difference between USP and FMV, but is the result of the price of the United States merchandise containing more expenses than the price of the foreign market merchandise. The Department's policy to avoid the margin creation effect is in accordance with the United States Court of Appeals' holding that the application of the USP tax adjustment under section 772(d)(1)(C) of the Act should not create an antidumping duty margin if pre-tax FMV does not exceed USP. *Zenith Electronics Corp. v. United States*, 988 F.2d 1573, 1581 (Fed. Cir. 1993). In addition, the CIT has specifically held that an adjustment should be made to mitigate the impact of expenses that are deducted from FMV and USP upon the USP tax adjustment and the amount of tax included in FMV. *Daewoo Electronics Co., Ltd. v. United States*, 760 F. Supp. 200, 208 (CIT, 1991).

However, the mechanics of the Department's adjustments to the USP tax adjustment and the foreign market tax amount as described above are not identical to those suggested in *Daewoo*. (See the "Fair Value Comparisons" section of this notice.)

Comment 5: Petitioner asserts that respondent understated the direct credit expenses incurred on U.S. consignment sales and that the Department should correct for this understatement. Petitioner states that respondent's classification of costs incurred during the consignment inventory period as inventory carrying costs and therefore as indirect selling expenses is inconsistent with the position taken by respondent's parent company in the investigation of Carbon Steel Products from France. Petitioner contends that in that investigation, respondent argued that the credit period for home market consignment sales began at the time the merchandise left the mill and not when the end customer was invoiced by respondent's customer. Petitioner states that the Department accepted that methodology in that case and should therefore calculate direct credit costs by adding the inventory carrying costs and the direct credit costs reported by respondent for each of its consignment sales.

Respondent maintains that expenses attributable to the Techalloy consignment sales were properly reflected. Respondent argues that the sale to its customer is not consummated until the consigned inventory has been withdrawn from the warehouse of respondent's customer and respondent's customer has then been invoiced. Respondent further argues that it is not the Department's practice to treat carrying costs on consignment sales as a direct selling expense where respondent is invoiced at the time the customer withdraws the merchandise from the warehouse.

DOC Position: We agree with that costs incurred during the consignment inventory period are not inventory carrying costs but are direct credit expenses. During the period that the merchandise remained in respondent's customer's consignment inventory, the merchandise was not available for sale to any other of respondent's customers. Since it was not available for sale, we have determined that the expense incurred by respondent while it remained in its customer's inventory is a direct expense. The maintenance of consignment inventory on the respondent's customer's site was a condition of the sale.

This approach is consistent with the Department's determination in Carbon

Steel Products from France. As petitioner correctly notes, in that investigation the Department determined that the credit period for home market consignment sales began at the time the merchandise left the producing mill en route to its consignment customer's inventory, and not when the final customer was invoiced (respondent invoiced its consignment customer when the consignment customer withdrew the material from its warehouse and invoiced its customer).

Comment 6: Petitioner argues that the Department should use the highest unreported expense amount uncovered during verification as BIA to correct for respondent's understatement of its foreign and U.S. brokerage charges. Petitioner asserts that the Department should increase the U.S. and foreign brokerage charges for all of respondent's U.S. sales.

Respondent states that the minor foreign brokerage discrepancies noted by petitioner apply only to sales of Ugine-Savoie products, and therefore the Department should not inflate all of the expenses of all of the U.S. sales reported by respondent. Furthermore, respondent states that the U.S. brokerage expenses were generally tiny and were offset by an overstatement of the shipment expenses incurred on its U.S. sales. Therefore, respondent contends that petitioner's argument should be rejected.

DOC Position: We agree with petitioner, in part. At verification, Ugine-Savoie company officials explained that their computer system systematically failed to pick up certain brokerage expenses (see November 9, 1993, verification report from William H. Crow II to David L. Binder at pages 36, 39, and 44). Respondent had not previously reported these expenses in its response. Therefore, we have used the averages of the missing brokerage charges examined during verification, and increased the charge reported under U.S. brokerage for Ugine-Savoie sales only by the average per-unit omission specific to each type of sale (e.g., purchase price, ESP, further manufactured) for use in the final determination.

Comment 7: Petitioner contends that information obtained at verification demonstrates that respondent significantly underreported the actual commission expenses it incurred on its U.S. sales. Petitioner argues that the Department should calculate a commission expense for all of respondent's U.S. sales.

Respondent states that it accurately reported the commissions paid on U.S.

sales. Respondent contends that the suggestion of a defect in the listing of commissions in the verification report is an error in that report which respondent addressed in its case brief. Therefore, respondent contends that petitioner's argument should be rejected.

DOC Position: We agree with respondent. The verification report's suggestion of an error in the listing of commissions was incorrect. We did not find any deficiencies in respondent's reporting of commissions. (See memorandum to the file from John Beck dated December 20, 1993.)

Comment 8: Petitioner states that in calculating imputed credit on sales for which respondent has not yet received payment, the Department, as BIA, should use as the payment date the scheduled date of the final determination. Petitioner states that for all U.S. sales where payment was not received as of the questionnaire response submission date, respondent should not be allowed to calculate imputed credit based on the customer's normal payment terms.

Respondent argues that there is no basis for selecting the date of the final determination as the date of payment for these sales. Respondent states that it has made updated payment information as requested by the Department. Respondent further states that for those sales still left unpaid, its practice of imputing credit expense based upon the normal payment terms plus the customer's average days of late payment is reasonable.

DOC Position: We agree with petitioner. For sales where the customer had not paid as of the time of verification, we re-calculated credit expenses using the date of the final determination as the date of payment. This is consistent with how we treated unreported dates of payment in the Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium, (58 FR 37083, July 9, 1993).

Comment 9: Respondent argues that the Department should not exclude sales to related customers in calculating FMV. According to respondent, these sales to related parties were made at arm's-length prices. Respondent also argues that the Department has no basis to apply the "arm's-length test" in this case because, this test is arbitrary and capricious. Respondent maintains that the test only proves that different purchasers may pay different prices. Further, respondent states that the test is faulty because it does not properly

account for variables which may affect prices, such as the size of the individual sale, the total volume of purchases by customers, and the fact that the volume purchased by a particular customer may affect the price to that customer.

Petitioner argues that the Department properly excluded sales to related parties in calculating FMV because there is no evidence that such sales were made at arm's-length prices. Petitioner notes that the Department has been given ample flexibility to devise methodologies to calculate dumping margins, is expected to follow the same methodology used in prior cases, and has relied on the related party test as a reasonable means to implement its regulations pertaining to related party sales. Petitioner states that the related party test is a reasonable means of implementing the Department's regulations and is not arbitrary.

DOC Position: We agree with petitioner and have used the related party test and excluded sales that were not found to be at arm's-length based on this test. As we stated in the Carbon Steel Products from France investigation, the Department's view is that the related party test fully conforms to 19 CFR 353.45(a), which provides that the Department should calculate FMV using sales to related parties only if it is satisfied that the prices of those sales are comparable to the prices of the subject merchandise sold to unrelated customers. Such instructions give the Department substantial latitude in defining "comparability." The results of the test in this investigation show that respondent's related party sales were not made at arm's-length prices.

Comment 10: Respondent contends that at the preliminary determination, the Department should not have excluded sales to related customers in calculating profit for purposes of computing CV. Respondent contends that the questionnaire provides that CV is to include home market profit from sales of the class or kind of merchandise. Respondent states that in Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; Final Results of the Antidumping Duty Order (58 FR 39729, July 26, 1993), the Department rejected a narrow formulation of profit and instead based it on all home market sales, even those to related parties. Therefore, respondent urges the Department to use its home market related party sales for purposes of the final determination.

Petitioner maintains that the exclusion of sales to related parties in

calculating profit for CV purposes was appropriate at the preliminary determination. Petitioner argues that the Department's regulations do not allow for the calculation of FMV based on related party sales where the price to the related parties is not comparable to the price to unrelated parties. For this reason, petitioner believes that sales which are excluded based on the related party test should also be excluded from determining profit for CV. Petitioner argues that selling price is a key factor in determining profits. Petitioner further states that profit reflects a value component rather than a cost component. Petitioner notes that the statute gives the Department authority to disregard related party transactions in calculating CV where any value element does not fairly reflect the amount usually reflected in sales in the market under consideration.

DOC Position: We agree with petitioner and have excluded all home market sales to related parties that fail the arm's-length test in calculating profit for CV purposes. We have determined that if sales to related parties are excluded for price-to-price comparisons, these sales cannot be included for determining profit for the calculation of CV. This is consistent with our treatment of related party sales found not to have been made at arm's-length in the Certain Hot-Rolled, Cold-Rolled, Corrosion-Resistant and Cut-to-Length Carbon Steel Flat Products Investigations from Korea (58 FR 37176, July 9, 1993). In that case, we excluded sales that were made to related parties in calculating profit for CV. While in AFBs the Department may have used related-party sales found not to have been at arm's-length when calculating profit for CV, we have reconsidered this approach in this case and have determined that it is more appropriate to exclude them.

Comment 11: Petitioner states that the Department should correct for certain errors in respondent's U.S. sales listing found at verification. These errors included omission of certain U.S. brokerage and handling charges, packing costs, warranty expenses, indirect selling expenses, foreign brokerage and handling charges, and foreign inland freight charges.

Respondent agrees that these errors should be corrected.

DOC Position: We agree with petitioner and respondent and have corrected for the errors made in the respondent's U.S. sales listing.

Comment 12: Petitioner states that the Department should continue to adjust respondent's further manufacturing costs to include expenses omitted by

respondent. Specifically, petitioner states that the non-recurring costs associated with plant closure, hazardous waste facility fees, and write-off of slow moving inventory are included in the U.S. financial statements and, therefore, they should be included in the further manufacturing G&A costs.

Respondent argues that the Department should not have included these costs in calculating the further manufacturing costs. Respondent contends that it properly omitted amounts noted in its financial statements regarding a hazardous waste facility fee assessment, a plant closure, and slow moving inventory because these items have nothing to do with increased value attributable to the further manufacture of the merchandise under investigation.

Respondent asserts that the hazardous waste fee is only an accrual for a potential liability for period prior to the POI and also prior to the current ownership of the company. Moreover, respondent claims that it may receive reimbursement of the fees in the future.

Respondent maintains that the amount attributable to the write-off of slow moving inventory is included in the financial statements as a footnote only and describes the write-off policy of the ultimate parent company and does not reflect a cost in the U.S. financial statements.

DOC Position: We agree with petitioner in part and respondent in part. We included the plant closure costs and the hazardous waste fees in the calculation of the further manufacturing costs because these items are included in the financial statements and reflect costs incurred during the POI. Even though the damages occurred prior to the POI, and the respondent may receive reimbursement in the future, the liability is currently payable, and recognized in the current period in the financial statements. This is consistent with what the Department did in the Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Germany (58 FR 37136, July 9, 1993). The Department did not include the slow-moving inventory write-off since it is not reflected in the U.S. income statement of the further manufacturer.

Comment 13: Petitioner argues that the Department should use BIA to calculate respondent's interest expense. Petitioner argues that we should use BIA because during verification, the Department discovered that respondent

had deducted both short-term and long-term interest income when calculating its net interest expense. As BIA, petitioner recommends applying Usinor-Sacilor's (Imphy's and Ugine-Savoie's parent company) average long-term interest rate as stated in the footnotes to the financial statements to total debt.

Respondent maintains that it is not possible for Usinor-Sacilor to separate interest income from interest expense from the consolidating companies. The consolidating companies only report net interest to Usinor-Sacilor for consolidation.

DOC Position: We agree with petitioner in part. We increased interest expense by the estimated amount of long-term interest income that is included as an offset to interest expense. The Department normally allows only short-term interest income as an offset to financing expense. This is consistent with the methodology the Department applied in the Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from Korea, (58 FR 11029, 11035, February 23, 1993). To estimate long-term interest income, we used the amount of assets which would generate long-term interest income, derived from Usinor-Sacilor's 1992 consolidated financial statements, multiplied by the 1992 French average annual long-term interest income rate published in the OECD Financial Statistics Monthly (January 1993).

Comment 14: Petitioner argues that the Department should correct respondent's alleged understatement of Ugine-Savoie's electricity expense. Respondent reduced Ugine-Savoie's electricity expense for income generated by the sale of electricity to an unrelated party. Petitioner contends that the cost of production calculations should be based on the actual cost of the inputs used to manufacture the merchandise under investigation and not reduced by unrelated income.

Respondent claims that it did not understate Ugine-Savoie's electricity expense. Respondent maintains that it gets reimbursed for the electricity that it sells to an unrelated company. Respondent argues that the Department's practice has been to reduce costs actually incurred where the respondent can demonstrate the extent to which the costs are unrelated to the production or sale of the subject merchandise.

DOC Position: We agree with petitioner. For cost of production and CV, we increased the electricity costs for the amount of the reimbursement in excess of the cost of the electricity. We based the calculation of cost of

production on the actual costs of the inputs used to manufacture the merchandise under investigation. We do not reduce those costs by income unrelated to the production and sale of the subject merchandise. This is consistent with what the Department did in Television Receivers, Monochrome and Color, from Japan: Final Results of Antidumping Duty Administrative Review, (54 FR 13917, April 6, 1989). In that case, the respondent reported royalty income unrelated to televisions, and rents received from related parties for the lease of equipment and buildings. Because none of these categories was related to sales of the product under review or current operations, the Department excluded the income from production costs. We did not make this adjustment to the cost of production reported for further manufactured products because the data was not presented in a way to allow us to do so and any adjustment would be insignificant. As BIA, we accepted this portion of the further manufactured cost data as reported.

Comment 15: Petitioner asserts that in the preliminary determination, the Department properly included in the cost of further manufacturing 100 percent of respondent's G&A expenses instead of accepting respondent's allocation of a portion of its G&A expenses to indirect selling expenses. Petitioner argues that the Department should continue to include all of respondent's G&A expenses in the cost of further manufacturing, since respondent did not produce a breakdown, or identify these indirect selling expenses.

Respondent argues that it properly allocated a relative share of G&A costs to selling expenses since the G&A expenses supported both the selling function and the further manufacturing function. Respondent maintains that by attributing 100 percent of the G&A to further manufacturing, the Department erroneously inflated the further processing costs.

DOC Position: We agree with petitioner and have included in the cost of further manufacturing the total G&A costs without allocating any of these costs to indirect selling expenses. Respondent provided no detail of the G&A cost items that it wanted to reclassify as indirect selling expenses. Respondent had the opportunity to provide such detail in its response to the Department's questionnaire and at verification. It failed to do so. Consequently, without such detail, we have no way of knowing whether

respondent accurately allocated the costs.

Comment 16: Respondent contends that the Department should not have used BIA for sales where there was no reported Techalloy plant code factor in the computer database for the preliminary determination. This identifying factor was necessary in order to assign the appropriate plant-specific G&A to those sales. For all sales of further manufactured merchandise where a specific Techalloy plant code was not specified, the Department applied a G&A adjustment factor representing the highest percentage adjustment that had been applied to any particular Techalloy facility as BIA applicable to the unidentified facility.

The sales without a plant code factor represent sales by MAC and United Stainless and Alloys (a division of MAC). The respondent asserts that these sales should not be adjusted by the BIA factor.

DOC Position: We agree with respondent. The Department used BIA for the adjustment at the preliminary determination because respondent had not provided the Department with the appropriate data needed to make respondent's claimed adjustment. Subsequently, respondent submitted the appropriate information on its further manufacturing computer tape. We verified this information and have used it in the final determination. Therefore, the use of BIA in this particular instance is no longer warranted.

Comment 17: Respondent contends that its calculation of value-added costs was appropriate. Respondent explains that major elements of respondent's value-added costs, such as labor and electricity, are recorded at actual cost on a product-by-product basis only at the end of the year. For this reason, respondent calculated value-added costs on an annual basis. Respondent argues that this approach comports with the Department's practice of using annual costs where they are a more accurate measure of actual cost.

Petitioner argues that the Department should revise respondent's fabrication costs to reflect costs incurred during the POI because respondent used fabrication costs based on average actual costs for the fiscal year, as opposed to costs specific to the POI. To do this, petitioner suggests that the Department use BIA to adjust for fabrication costs for respondent from an annual basis to the POI. Petitioner suggests that the Department should increase the cost of manufacture of SSWR manufactured by respondent by a percentage identified in the cost verification report, where the Department stated that respondent's

failure to submit costs based on the POI decreased the submitted costs by a specific amount. (See November 9, 1993, verification report of COP and CV for Imphy S.A. and Ugine-Savoie at page 1.)

DOC Position: We agree with respondent and for the purpose of the final determination, we did not adjust certain fabrication costs in the cost of production calculation. The costs reflected in respondent's monthly reports do not reflect costs actually incurred because, for example, for electricity an annual payment may be required depending on the annual electricity used. In respondent's normal cost accounting system these certain costs are not adjusted to actual until the end of the fiscal year. Consequently, it would have been very difficult for respondent to isolate costs for the POI. Accordingly, for the final determination, we accepted the fabrication costs submitted by Ugine-Savoie. This is consistent with the Department's approach in the Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom (58 FR 6207, January 27, 1993).

Comment 18: Respondent maintains that its depreciation methodology is reasonable. Respondent explains that its basis for allocating depreciation to product lines is derived from a theoretical study performed in 1986, and that the results of this study are used in the company's normal accounting system. Respondent also notes that there was no deviation from the normal method employed by the company to calculate depreciation used in the submission. In addition, respondent points out that the submitted depreciation expense is based on total actual expense.

Petitioner argues that the Department should calculate respondent's depreciation costs based on the cost and estimated useful lives of the assets that respondent used to manufacture stainless steel wire rod. Petitioner claims that the theoretical study performed in 1986 on depreciation was done based on replacement costs, as opposed to actual costs. Further, petitioner argues, the study is not appropriate for application to this investigation because the methodology proposed in the study and applied by respondent does not reflect the actual value of the assets used to produce the merchandise under investigation.

DOC Position: While we agree with petitioner that the use of a 1986 study which uses estimated replacement costs and estimated yields is not reflective of

actual depreciation costs for the subject merchandise, this allocation methodology is used by respondent in its normal accounting system. Without a more accurate alternative, we accepted respondent's methodology.

Comment 19: Respondent expresses concern about a statement in the Verification of Cost of Production and Constructed Value report of Imphy S.A. and Ugine-Savoie at page 2 regarding the "Financial Link Account." The report states that ". . . expenses in this account were not identifiable as they resulted from the consolidation." Respondent argues that expenses included in this account do not relate to the subject merchandise, and therefore, should not be included in the calculation of COP and CV. Respondent emphasizes that it demonstrated at verification that the submitted G&A expenses reconciled to the income statements. Further, respondent argues, the submitted G&A expenses included an allocation of the actual management expenses incurred by the Usinor-Sacilor Group, and that respondent demonstrated the reconciliation of the actual management expenses to the accounts of the management group.

DOC Position: We disagree with respondent. We included the amounts in the financial link account in the calculation of the interest and general and administrative rates. At verification, respondent indicated that these amounts relate to the expense category where they are reported in the income statement but could not be matched in the consolidation process. The financial statements for all Usinor-Sacilor Group companies are consolidated at the end of the year. On elimination of intercompany transactions during the consolidation process, there is not always a perfect match. These non-matching eliminations are then put into the financial link account. Since these costs could not be specifically identified or reconciled, it is possible that they relate to the subject merchandise. It is the Department's practice to include all costs relevant to the subject merchandise in the calculation of COP and CV. Therefore we included these additional costs in the calculation of the interest and G&A rates.

Comment 20: Petitioner argues that the Department should adjust respondent's COP to properly account for restructuring costs and for amortization of goodwill expense. Petitioner contends that these costs were included in respondent's financial statements, but excluded from the submission.

Respondent argues that the Department reviewed the calculation of

the cost of manufacture and general expenses at verification, and found that all appropriate costs had been included. Respondent also points out that there is no amortization of goodwill in Imphy's 1992 financial statement. Thus, there is no basis for the Department to adjust respondents' cost of production for restructuring or goodwill.

DOC Position: We agree with respondent. At verification we found the costs of restructuring that are included in the financial statements were properly included in G&A expenses. We also determined that the amortization of intangible assets was properly included in the COP.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of SSWR from France that are entered, or withdrawn from warehouse, for consumption on or after August 5, 1993, the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to these investigations exceeds the U.S. price, as shown below. The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Imphy and Ugine-Savoie	24.39
All others	24.39

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: December 20, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-31629 Filed 12-28-93; 8:45 am]

BILLING CODE 3510-DS-P

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 84-00011.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Watsand International, Ltd. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to Watsand International, Ltd.

FOR FURTHER INFORMATION CONTACT: Friedrich R. Crupe, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") [Pub. L. No. 97-290, 15 U.S.C. 4011-21] authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325 (1986). Pursuant to this authority, a certificate of review was issued on May 25, 1984 to Watsand International, Ltd.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, § 235.14 (a) of the Regulations, 15 CFR 325.14 (a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (Sections 325.14 (b) of the Regulations, 15 CFR 325.14 (b)). Failure to submit a complete annual report may be the basis for revocation. Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a) (3) and 325.14(c).

On May 14, 1993, the Department of Commerce sent to Watsand International, Ltd. a letter containing annual report questions with a reminder that its annual report was due on July 9, 1993. Additional reminders were sent on July 13, 1993 and on August 13, 1993. The Department has received no written response from Watsand International, Ltd. to any of these letters.

On November 17, 1993, and in accordance with § 325.10 (c) (2) of the Regulations, [15 CFR 325.10 (c) (2)], the Department of Commerce sent a letter by certified mail to notify Watsand International, Ltd. that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing Watsand International, Ltd. thirty days to respond was published in the **Federal Register** on November 22, 1993 at 58 FR 61674. Pursuant to 325.10(c) (2) of the Regulations (15 CFR 325.10(c) (2)), the Department considers the failure of Watsand International, Ltd. to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to Watsand International, Ltd. for its failure to file an annual report. The Department has sent a letter, dated December 22, 1993, to notify Watsand International, Ltd. of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** 325.10(c) (4) and 325.11 of the Regulations, 15 CFR 324.10(c) (4) and 325.11 of the Regulations, 15 CFR 325.10(c) (4) and 325.11.

Dated: December 22, 1993.

Friedrich R. Crupe,
Acting Director, Office of Export Trading
Company Affairs.

[FR Doc. 93-31630 Filed 12-28-93; 8:45 am]

BILLING CODE 3510-DR-P

U.S. Geological Survey, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93-116. *Applicant:* U.S. Geological Survey, Lakewood, CO 80225. *Instrument:* Borehole, In Situ

Hydrochemical Electrode System.

Manufacturer: Svensk

Kärnbränslehantering AB, Sweden.

Intended Use: See notice at 58 FR 51618, October 4, 1993. *Reasons:* The foreign instrument provides the following resolutions: (1) hydrostatic potential (Eh) of 0.001 volt, (2) pH of 0.02 unit, (3) sulphide concentration of 0.5 mg/l, (4) temperature of 0.05° celsius, and can withstand pressure in boreholes to 1.0 km. *Advice Received From:* Department of Energy, November 22, 1993.

Docket Number: 93-123. *Applicant:* University of Alaska, Fairbanks, AK 99775-0800. *Instrument:* Low Light Level Color Television Camera, Model Pavicam-S. *Manufacturer:* Pavic Inc., Japan. *Intended Use:* See notice at 58 FR 55043, October 25, 1993. *Reasons:* The foreign instrument provides: (1) a sensitivity of 2 lux scene illumination with f2.8 lens for full video (100% IRE) at 0 dB, (2) signal to noise ratio of 56 dB, (3) horizontal resolution of 500 lines and (4) a silicon intensifier target tube. *Advice Received From:* Naval Research Laboratory, November 24, 1993.

Docket Number: 93-126. *Applicant:* Research Foundation, State University of New York, Stony Brook, NY 11794. *Instrument:* Microstructure Profiler. *Manufacturer:* Seimac Ltd., Canada. *Intended Use:* See notice at 58 FR 55043, October 25, 1993. *Reasons:* The foreign instrument provides velocity and temperature measurements at sub-centimeter resolution using rapid sampling and extra velocity microstructure sensors. *Advice Received From:* National Oceanic and Atmospheric Administration and a private research institution, November 24, 1993.

The Department of Energy, Naval Research Laboratory, National Oceanic and Atmospheric Administration and a private research institution advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93-31667 Filed 12-28-93; 8:45 am]

BILLING CODE 3510-DS-F

University of California et al.; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 93-030R. *Applicant:* University of California, San Diego, San Diego, CA 92121. *Instrument:* Wave Measuring Equipment. *Manufacturer:* Datawell, BV, The Netherlands. Original notice of this resubmitted application was published in the **Federal Register** of April 26, 1993.

Docket Number: 93-145. *Applicant:* Brigham Young University, Purchasing Department, C-144 ASB, Provo, UT 84602. *Instrument:* Microvolume Stopped Flow Spectrofluorimeter, Model SX.17MV. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* The instrument will be used for studies of vitamin B6 containing enzymes in experiments that deal with changes in spectral properties upon substrate addition with the objective of characterizing kinetic and mechanistic properties. In addition, the instrument will be used in graduate research courses in chemistry and biochemistry to teach fundamental research techniques to undergraduate students. *Application Received by Commissioner of Customs:* November 16, 1993.

Docket Number: 93-146. *Applicant:* Hunter College, Biological Sciences Department, 695 Park Avenue, Room 315HN, New York, NY 10021. *Instrument:* Northern Light Illuminator. *Manufacturer:* Imaging Research, Inc., Canada. *Intended Use:* The instrument is part of an image analysis system which will be used to quantitate mRNA levels in coronal sections of brain tissue which will allow the cellular determination of shifts in neuronal plasticity due to environmental challenge. *Application Received by*

Commissioner of Customs: November 17, 1993.

Docket Number: 93-147. *Applicant:* Department of Veterans Affairs, Middleville Road, Northport, NY 11768. *Instrument:* Electron Microscope, Model JEM 1010. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to examine various types of specimens of tumors, blood cells, brain, spinal cord, heart muscle, kidneys and lymph nodes, etc., from patients with pathological disorders. In addition, the instrument will be used on a one-to-one basis to train and teach staff members and medical residents in pathology, all aspects of Diagnostic Electron Microscopy. *Application Received by Commissioner of Customs:* November 18, 1993.

Docket Number: 93-148. *Applicant:* U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, John C. Stennis Space Center, Building 1103, Room 218, Stennis Space Center, MS 39529-6000. *Instrument:* Sounder System, Model EK 500. *Manufacturer:* Simrad Subsea, Norway. *Intended Use:* The instrument will be used on a research ship to acoustically sample fish densities, over a wide expanse of ocean during population density studies. *Application Received by Commissioner of Customs:* November 18, 1993.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 93-31666 Filed 12-28-93; 8:45 am]
BILLING CODE 3510-DS-F

National Institute of Standards and Technology

Meeting to Discuss an Opportunity to Join a Cooperative Research and Development Consortium for Improving the Service Life Prediction of Organic Coating Systems

AGENCY: National Institute of Standards and Technology, DOC.
ACTION: Meeting notice.

SUMMARY: The National Institute of Standards and Technology (NIST) in cooperation with the Federal Highway Administration (FHWA) invites interested parties to attend a meeting on February 1, 1993 to discuss the possibility of setting up a cooperative research consortium on the development of new technology to develop techniques for improved service life prediction of coatings. Parties interested in participating in the consortium should be prepared to invest adequate resources in the collaboration

and be firmly committed to the goal of developing new coating service life prediction technology.

Any program undertaken will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Pub. L. 99-502, 15 U.S.C. 3710a), 2 which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment and facilities—but no funds—to the cooperative research program.

The meeting will be held on February 1, 1994 at 8:30 a.m., room B221—Building 226 at NIST in Gaithersburg, MD, for interested parties. The meeting will discuss the possible formation of a research consortium including NIST, FHWA, industry and academia to conduct research in this area. This is not a grant program.

DATES: The meeting will be held on February 1, 1994. Interested parties should contact NIST to confirm their attendance at the address, telephone number or FAX number shown below no later than January 15, 1994.

ADDRESSES: The meeting will be held at 8:30 a.m., room B221—Building 226, National Institute of Standards and Technology, Gaithersburg, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Jonathan Martin, Building 226, room B348, National Institute of Standards and Technology, Gaithersburg, MD 20899. Telephone: 301-975-6717; FAX: 301-990-6891.

Dated: December 20, 1993.

Samuel Kramer,
Associate Director.
[FR Doc. 93-31766 Filed 12-28-93; 8:45 am]
BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

[I.D. 122293A]

Pacific Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Groundfish Permit Review Board (GPRB) will meet on January 18-20, 1994, at the Holiday Inn Crowne Plaza, Portola B Room, 600 Airport Boulevard, Burlingame, CA; telephone: (415) 340-8500. The meeting will begin on January 18 at 1 p.m., and

reconvene on January 19 and 20 at 8 a.m. The meeting will not recess for the day until the business for each day is completed.

The GPRB will review appeals on NMFS denials of applications for West Coast groundfish limited entry permits.

This meeting is physically accessible to the disabled. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas Bigford at (206) 526-6140 at least 5 days prior to the January 18-20 meeting date.

FOR FURTHER INFORMATION CONTACT: Thomas Bigford, NMFS, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; telephone: (206) 526-6140.

Dated: December 23, 1993.

Richard H. Schaefer,
Director, Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-31833 Filed 12-28-93; 8:45 am]
BILLING CODE 3510-22-P

[I.D. 122293B]

Pacific Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Technical Team (STT) will meet on January 18-21, 1994, at the Council's office, 2000 SW First Avenue, Suite 420, Portland, OR; telephone: (503) 326-6352. The meeting will begin on January 18 at 10 a.m., and continue each day for the remainder of the week, from 8 a.m. until 5 p.m.

The STT will draft the "Review of 1993 Ocean Salmon Fisheries." The final report will be distributed to the public and reviewed by the Council at its March meeting in Portland, OR.

This meeting is physically accessible to the disabled. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326-6352 at least 5 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: John Coon, Fishery Management Coordinator (Salmon), Pacific Fishery Management Council, 2000 SW First Avenue, suite 420, Portland, OR 97201; telephone: (503) 326-6352.

Dated: December 23, 1993.

Richard H. Schaefer,

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

[FR Doc. 93-31832 Filed 12-28-93; 8:45 am]

BILLING CODE 3510-22-P

[I.D. 122293C]

South Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Council's (Council) Billfish Advisory Panel (Panel) will meet on January 20-21, 1994, at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC; telephone: (803) 571-4366. The meeting will be held on January 20 from 1 p.m. until 5 p.m., and on January 21, from 8:30 a.m. until 12 noon.

The panel will review the status of the billfish stocks and will discuss recommendations for future management.

This meeting is physically accessible to the disabled. Requests for sign language interpretation or other auxiliary aids should be directed to Carrie Knight at the council address below by January 13.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407-4699; telephone: (803) 571-4366.

Dated: December 23, 1993.

Richard H. Schaefer,

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

[FR Doc. 93-31831 Filed 12-28-93; 8:45 am]

BILLING CODE 3510-22-P

Technology Administration

Public Meeting to Discuss Proposed Cooperation Between the Technology Administration and Japan's Agency of Industrial Science and Technology

AGENCY: Technology Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: This is to notify interested parties of a public meeting to be held at the offices of the U.S. Department of Commerce to provide a forum for discussion of possible activities under a

proposed Memorandum of Understanding (hereinafter "MOU") to be entered into between the Technology Administration (hereinafter "TA"), U.S. Department of Commerce, and the Agency of Industrial Science and Technology (hereinafter ("AIST")), of Japan's Ministry of International Trade and Industry (hereinafter "MITI"), and of possible joint research activities to be undertaken thereunder.

Under the proposed MOU, the parties will engage in mutual research, development, collaboration and other joint activities in the field of civil industrial technologies.

TIME AND PLACE: This public meeting will take place on January 11, 1994 from 1 p.m. to 5 p.m. The meeting will take place at the Main Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Please fax Dr. Phyllis Genter Yoshida at (202) 482-4826 one week prior to the meeting for a reservation and the specific location.

AGENDA:

1. Discuss the general purpose and scope of the MOU and the activities referenced therein.
2. Discuss possible participation in MOU-related activities by private and public sector entities.
3. Discuss intended benefits to U.S. and Japanese industry and commerce.
4. Discuss possible initiatives and enhanced incentives to improve U.S. access to Japanese technology, covering the areas of personnel issues, notification of research opportunities, scientific and technical information, and centers in Japan to provide support for U.S. researchers.

PUBLIC PARTICIPATION: The meeting will be open to the public, and will consist primarily of an open discussion. Seats will be available on a first-come first-served basis.

FOR FURTHER INFORMATION CONTACT:

Dr. Phyllis Genter Yoshida, Director, Japan Technology Program, Office of International Technology Policy and Programs, Technology Administration, U.S. Department of Commerce, room 4817, 14th Street and Constitution Avenue, NW., Washington, DC 20230, fax (202) 482-4826.

Dated: December 21, 1993.

Mary L. Good,

Under Secretary for Technology.

[FR Doc. 93-31631 Filed 12-28-93; 8:45 am]

BILLING CODE 3510-8P-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

December 23, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing levels for the first year of the North America Free Trade Agreement.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6711. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In order to implement Annex 300-B of the North America Free Trade Agreement (NAFTA), restrictions and consultation levels for certain cotton, wool and man-made fiber textile products from Mexico are being established for the period beginning on January 1, 1994 and extending through December 31, 1994.

These restrictions and consultation levels do not apply to NAFTA originating goods, as defined in Annex 300-B, chapter 4 and Annex 401 of the agreement. In addition, restrictions and consultation levels do not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90; or Chapter 61, 62 or 63 if, after such assembly, those goods that would have qualified for treatment under 9802.00.90 have been subject to bleaching, garment dyeing, stone-washing, acid-washing or perma-pressing. Restrictions and consultation levels will also not apply to textile and apparel goods which are exported from the United States and subsequently re-imported after repairs or alterations and entered under

Harmonized Tariff Schedule (HTS) number 9802.00.40 or 9802.00.50.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to implement levels for the 1994 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 58 FR 62645, published on November 29, 1993).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of NAFTA, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 23, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the provisions of Executive Order 11651 of March 3, 1972, as amended; and pursuant to the North America Free Trade Agreement (NAFTA) between the Governments of the United States, the United Mexican States and Canada, you are directed to prohibit, effective on January 1, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994, in excess of the following levels:

Category	Twelve-month level
219	9,438,000 square meters.
313	16,854,000 square meters.
314	6,966,904 square meters.
315	6,966,904 square meters.
317	8,427,000 square meters.
338/339/638/639 ...	650,000 dozen.
340/640	120,439 dozen.
347/348/647/648 ...	650,000 dozen.
410	397,160 square meters.
433	11,000 dozen.
443	150,000 numbers.
611	1,267,710 square meters.
633	10,000 dozen.
643	155,556 numbers.

Imports charged to these category levels for the period January 1, 1993 through December 31, 1993 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the levels established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future pursuant to the provisions of Annex 300-B of the NAFTA.

The foregoing levels do not apply to NAFTA originating goods, as defined in Annex 300-B, chapter 4 and Annex 401 of the agreement. In addition, restrictions and consultation levels do not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90; or Chapter 61, 62 or 63 if, after such assembly, those goods that would have qualified for treatment under 9802.00.90 have been subject to bleaching, garment dyeing, stone-washing, acid-washing or perma-pressing. Restrictions and consultation levels will also not apply to textile and apparel goods which are exported from the United States and subsequently re-imported after repairs or alterations and entered under Harmonized Tariff Schedule (HTS) number 9802.00.40 or 9802.00.50.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-31845 Filed 12-28-93; 8:45 am]

BILLING CODE 3510-DR-F

Termination of the Requirement for an ITA-370P Form for Textile Products Exported From Mexico Under the Special Regime Program

December 22, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs terminating the requirement for a ITA-370P form for goods exported under the Special Regime Program.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Lori Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the North America Free Trade Agreement, effective on January 1, 1994, shipments of products exported from Mexico and entered into the United States under Harmonized Tariff Schedule (HTS) provision 9802.00.90.00 (formerly the Special Regime Program) will no longer require an ITA-370P form (Shippers Export Declaration)

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, effective on January 1, 1994, to amend the existing export visa and certification requirements for Mexico to terminate the requirement that shipments of U.S. formed and cut fabric from Mexico be accompanied by an ITA-370P form (Shippers Export Declaration). Also effective on January 1, 1994, U.S. Customs will neither accept nor sign the ITA-370P form for such shipments.

See 53 FR 32421, published on August 25, 1988.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on August 22, 1988, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes export visa and exempt certification requirements for certain textiles and textile articles, produced, manufactured or assembled in Mexico.

Effective on January 1, 1994, you are directed to terminate the requirement that shipments of apparel made from U.S. formed and cut fabric from Mexico entered into the United States under Harmonized Tariff Schedule (HTS) provision 9802.00.90.00 (formerly the Special Regime Program) be accompanied by an ITA-370P form (Shippers Export Declaration). Also effective on January 1, 1994, you are directed to neither accept nor sign the ITA-370P form for such shipments.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-31846 Filed 12-28-93. 8 45 am]

BILLING CODE 3510-DR-F

COMMODITY FUTURES TRADING COMMISSION**Chicago Mercantile Exchange Options on One-Year U.S. Treasury Bill Futures Contracts, and Amendments to, and Reactivation of, the Underlying Dormant One-Year U.S. Bill Futures Contract**

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of a proposed commodity option contract and amendments to the underlying futures contract.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in options on the One-Year U.S. Treasury Bill futures contract. In addition, the CME proposes to amend and reactivate the dormant One-Year U.S. Treasury Bill futures contract that would underlie the proposed contract. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before January 28, 1994.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME One-Year U.S. Treasury Bill futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: Regarding the dormant One-Year U.S. Treasury Bill futures contract, the CME proposes to convert the physical delivery procedures to cash settlement procedures based on the highest accepted yield at the first one-year U.S. Treasury bill auction during the futures contract month. Further, the CME proposes to double the contract size to \$500,000. In addition, the CME proposes to increase the speculative position limits.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME in support of the application for contract market designation and the amendments to the underlying futures contract may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on December 22, 1993.

Blake Imel,

Acting Director.

[FR Doc. 93-31808 Filed 12-28-93; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE**Department of the Army****Removal of DECCA Electronic Lattices From DMA Charts**

AGENCY: Defense Mapping Agency, DOD.

ACTION: Notice.

SUMMARY: This notice announces that the Defense Mapping Agency intends to begin removing DECCA Electronic Navigation Lattices from new editions of charts commencing January 1, 1994. With the advent of the Global Positioning System (GPS), the requirement from DECCA navigation has diminished.

ADDRESSES: Director, Defense Mapping Agency, ATTN: PRB, Mail Stop A-13, 8613 Lee Highway, Fairfax, Virginia 22031-2127.

FOR FURTHER INFORMATION CONTACT: Mr. Jace Singler, (703) 385-9260.

Kenneth L. Denton,

Army Federal Register Liaison Office.

[FR Doc. 93-31784 Filed 12-28-93; 8:45 am]

BILLING CODE 3710-06-M

Military Freight Traffic Rules Publication (MFTRP) No. 1A: Proposed Changes

AGENCY: Military Traffic Management Command, DoD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command proposes to amend the procedures used to reimburse commercial motor carriers for the cost of overdimensional and overweight permits. The amendment has two parts. The first part is the cancellation of Item 416, Overweight Permit Shipments (OO), and Item 417, Overdimensional Permit Charges (OD), shown in MTMC Military Freight Traffic Rules Publication (MFTRP) No. 1A. These items provide individual state rates and charges for overweight and overdimensional shipments that require special permits. The second part of the amendment is a new Item 421, Overdimensional/Overweight Permits, to be published in MFTRP No. 1A. This item will read as follows:

Item 421 Overdimensional/Overweight Permits

1. When a carrier is required to obtain hauling permits in connection with overdimensional and/or overweight articles, the actual fee paid to any state, county or municipality for the permit, will be assessed, in addition to all other applicable charges. The carrier will be compensated for obtaining the permit through Item 55, ADVANCING CHARGES.

2. Definitions.

a. Overdimensional shipment. A shipment containing one or more non-divisible articles which measure in excess of 576 inches (48 feet) in length, 102 inches (8 feet, 6 inches) in width, or 162 inches (13 feet, 6 inches) in height from the ground to the top of the article after loading.

b. Overweight shipment. A shipment containing non-divisible article which exceeds 48,000 pounds (45,000 pounds on lowboy equipment).

3. The shipper will advise the carrier that a shipment is overdimensional/overweight when equipment is ordered. The carrier will provide the shipper a copy or facsimile of the origin state permit at time of loading. The carrier will provide the estimated permit costs

and ancillary charges to the shipper no later than 24 hours prior to loading. The shipper will cite the fees on the Government Bill of Lading (GBL) and include them in the estimated charges. The carrier will attach a copy of the permit receipt to the GBL it submits for payment.

DATES: Comments must be received on or before January 28, 1994.

ADDRESSES: Comments may be mailed to Headquarters, Military Traffic Management Command, ATTN: MTOP-T-NI, 5611 Columbia Pike, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Mr. John Alexander, (703) 756-1870.

SUPPLEMENTARY INFORMATION: Carriers are currently reimbursed for overweight and overdimensional permit costs based on charges published in Items 416 and 417, respectively, of MFTRP No. 1A. The charges consist of individual state permit fees. As states change their fees, Items 416 and 417 become outdated. In lieu of frequently updating these items, MTMC is proposing to reimburse carriers for actual permit costs incurred plus ancillary expenses. In Federal Register Volume 58, No. 51, MTMC proposed that carriers should include permits costs in their linehaul rates. Carrier comments opposed to this proposal caused MTMC to reexamine this issue, resulting in the current proposal.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93-31785 Filed 12-28-93; 8:45 am]

BILLING CODE 5000-03-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Littoral Warfare/ Amphibious Warfare will meet on January 10, 11, and 12, 1994. The meeting will be held at MacDill Air Force Base, Tampa, Florida. The meeting will commence at 8:00 a.m. and terminate at 5:45 p.m. on January 10; commence at 8:00 a.m. and terminate at 6:00 p.m. on January 11; commence at 8:00 a.m. and terminate at 5:00 p.m. on January 12, 1994. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide the Department of the Navy with (1) an assessment of the capabilities and readiness of the U.S. Navy and Marine Corps to effectively

conduct littoral and amphibious warfare operations, and (2) recommendations for technological investments that can improve performance while reducing risk to Marine and Naval forces. The agenda will include briefings and discussions related to 21st century advanced land warfare; joint littoral warfare training initiatives and advanced training/rehearsal decision aiding technologies; strike warfare, riverine warfare operations, and electronic warfare initiatives; offensive mining initiatives; science and technology issues impacting littoral warfare; and integrated command and control.

These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander R. C. Lewis, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000 Telephone Number: (703) 696-4870.

Dated: December 22, 1993

Michael P. Rummel

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-31849 Filed 12-28-93; 8:45 am]

BILLING CODE 3810-AE-F

Planning and Steering Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Planning and Steering Advisory Committee will meet January 13, 1994, from 0900 to 1530, at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss topics relevant to SSBN security. The entire agenda will consist of classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive

order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: LCDR D. B. Rich, Pentagon Room 4D534, Washington, DC 20350, Telephone Number: (703) 693-7248.

Dated: December 23, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-31850 Filed 12-28-93; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.183A, 84.183D, 84.183E, 84.183F]

Direct Grant Programs and Fellowship Programs; Extension of Closing Dates

AGENCY: Department of Education

ACTION: Extension of closing dates.

SUMMARY: On September 24, 1993, the Department of Education published a combined application notice inviting applications for new awards for fiscal year 1994 under many of the Department's direct grant and fellowship programs. Detailed information concerning each competition was included in each program notice.

The purpose of this notice is to extend the deadline for transmittal of applications and the deadline for intergovernmental review for four programs under the Fund for the Improvement of Postsecondary Education. This action is taken as a result of the unavailability of application forms and guidelines until December 30, 1993.

The four programs affected by this extension are as follows:

- *CFDA 84.183A.* Drug-Prevention Programs in Higher Education—Institution-Wide Program (58 FR 50141, 50151, 50155-56). The revised deadline for transmittal of applications is February 25, 1994. The revised deadline for intergovernmental review is April 26, 1994.

- *CFDA 84.183D.* Drug-Prevention Programs in Higher Education—Special Focus Competition: Specific Approaches to Prevention Projects (Invitational Priority: Higher Education Consortia for Drug Prevention) (58 FR 50141, 50152, 50156-57). The revised deadline for transmittal of applications is March 11, 1994. The revised deadline

for intergovernmental review is May 10, 1994.

• *CFDA 84.183E*. Drug-Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Dissemination of Successful Projects (58 FR 50141, 50152, 50157) The revised deadline for transmittal of applications is February 14, 1994. The revised deadline for intergovernmental review is April 15, 1994.

• *CFDA 84.183F*. Drug-Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Analysis Projects (58 FR 50141, 50152, 50157–58). The revised deadline for transmittal of applications is February 16, 1994. The revised deadline for intergovernmental review is April 17, 1994.

FOR APPLICATIONS OR INFORMATION

CONTACT: The Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5175. Telephone: (202) 205–0104 to order applications; or (202) 708–5750 for information. 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.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 3211.

Dated: December 22, 1993.

David A. Longanecker,
Assistant Secretary for Postsecondary Education.

[FR Doc. 93–31795 Filed 12–28–93; 8:45 am]

BILLING CODE 4000–01–P

Direct Grant Programs and Fellowship Programs; Correction

AGENCY: Department of Education.

ACTION: Correction.

In the notice inviting applications for new awards for fiscal year 1994, beginning on page 50138 in the issue of Friday, September 24, 1993, make the following corrections:

On page 50141, in the chart for Office of Postsecondary Education, in the listing for CFDA No. 84.103, Training Program for Federal TRIO Programs, in the fourth column the application deadline date should read "3/31/94."

On page 50154, in the application notice for CFDA No. 84.103, Training Program for Federal TRIO Programs, in the first column, paragraph nine, Estimated Award Date, the date should read "August 1, 1994."

FOR FURTHER INFORMATION CONTACT: May J. Weaver, U.S. Department of Education, 400 Maryland Avenue, SW., room 5065, Washington, DC 20202–5249. Telephone (202) 708–4804.

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.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Dated: December 22, 1993.

David A. Longanecker,
Assistant Secretary for Postsecondary Education.

[FR Doc. 93–31796 Filed 12–28–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Finding of No Significant Impact; Proposed B-Factor (Asymmetric Electron Positron Collider)

AGENCY: U.S. Department of Energy.

ACTION: Finding of no significant impact.

SUMMARY: The Department of Energy (DOE) issues this Finding of No Significant Impact (FONSI) on its proposal to construct and operate the B-Factor. This finding is based on the DOE B-Factor Environmental Assessment (EA), DOE/EA–0882, September 1993, which evaluated the environmental effects of construction and operation of a proposed B-Factor particle accelerator (Asymmetric Electron Positron Collider) at either the Stanford Linear Accelerator Center (SLAC) near Menlo Park, California, or at the Cornell Electron Storage Ring

(CESR) in Ithaca, New York. The B-Factor would produce certain subatomic particles, known as B mesons, that are important to high-energy physics. Subsequent to the release of the EA and Proposed FONSI, the Secretary of Energy announced on October 4, 1993, that SLAC had been selected as DOE's preferred site.

Based on the analyses in the EA, DOE has determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq. Three documents were received from the public which provided comments on the proposed FONSI, EA or project. The Town of Ithaca, New York, indicated that it concurred with the FONSI. The Department of Planning of Tompkins County, New York, expressed concern about the possibility of spills of hazardous materials near Cascadilla Creek and requested copies of the Spill Prevention Control and Countermeasures Plan and the Stormwater Pollution Prevention Plan. A citizen from Woodside, California, wrote a letter expressing concerns with alternative energies and the economics of efficiency improvements which would generate more jobs. No Federal or State agencies responded. DOE has reviewed the comments received and has concluded that no new information was provided that would change the determination that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, 42 U.S.C. 4321 et seq. Therefore, an environmental impact statement is not required. Further, it is DOE's conclusion that the comments provided no new information that would cause DOE to change its mind with regard to the selection of SLAC as the preferred site.

FOR FURTHER INFORMATION CONTACT:

Requests for further information on the proposed project or for copies of the EA and FONSI should be sent to: James K. Farley, U.S. Department of Energy, Office of Energy Research (ER–8), 1000 Independence Avenue, SW., Washington, DC 20585, (301) 903–2314.

The FONSI, EA and related documents are also available for public review at the DOE public reading rooms listed below.

California: U.S. Department of Energy, San Francisco Operations Office, 1301 Clay Street, Room 700N, Oakland, California 94612, (510) 637–1762
District of Columbia: U.S. Department of Energy, Freedom of Information

Reading Room, Forrestal Building, Room 1E-90, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020

New York: Newman Laboratory, Cornell University, Ithaca, New York 14853-5001, (607) 255-4951

For information on the availability of specific documents and the hours of operation of the DOE reading rooms, please contact reading rooms at the telephone numbers provided.

For general information on the DOE NEPA review process, contact: Carol M. Borgstrom, U.S. Department of Energy, Office of NEPA Oversight (EH-25), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION:

Proposed Action

The proposed action is to build a B-Factory at one of two locations, SLAC or Cornell, by modification of existing collider or accelerator facilities at either site. At SLAC, the existing facility is known as the Positron-Electron Colliding-Beam Storage Ring Project (PEP); at Cornell, the existing facility is called the Cornell Electron Storage Ring (CESR). After the EA and the Proposed FONSI were issued, DOE announced that SLAC was chosen as the preferred alternative site for the B-Factory.

B-Factory at SLAC

Construction and operation of a B-Factory at SLAC, referred to as PEP-II and identified by the Secretary as the preferred site, would involve collaboration of SLAC, Lawrence Berkeley Laboratory (LBL), and Lawrence Livermore National Laboratory (LLNL), as well as other institutions, in the design, assembly, and testing of components and equipment for the B-Factory. No conventional construction or modification to surface buildings would be required for PEP-II. The existing conventional facilities for PEP consist of beam housings, research halls, support buildings, roads, earthwork, fencing, landscaping, electrical and mechanical utilities, and the sanitary-sewer and storm-drain systems. These existing systems and facilities have adequate capacity for PEP-II.

The upgrade of the existing PEP collider to the PEP-II B-Factory would involve:

(1) The removal and disassembly of various components such as magnets, vacuum chambers, etc.;

(2) The refurbishment of reusable PEP components;

(3) The fabrication of new components at SLAC, LBL, LLNL, or other collaborating institutions;

(4) The assembly of PEP-II components into the existing tunnels and detection facilities at SLAC;

(5) Minor modifications to the linear accelerator focusing and transport systems; and

(6) Disposal of some components that cannot be reused, possibly as low-level radioactive waste.

Operation of PEP-II is expected to begin in 1998, with an estimated operational life for experimentation of 10-15 years. During operations, positrons and electrons would be accelerated in a linear accelerator and injected into storage rings where they would circulate in opposite directions, until they are brought together and collide in an interaction hall of a tunnel, thereby producing the B mesons for observation and study.

CESR-B Alternate Site

The upgrade of the existing CESR accelerator at Cornell to a B-Factory, referred to as the CESR-B, would involve: (1) The removal and disassembly of existing components; (2) conventional construction to provide approximately 49,500 square feet of additional space for electrical and mechanical equipment and x-ray beam lines; (3) conventional construction to add 2,900 square feet to the tunnel flare; (4) construction to expand existing routes of electric transmission lines; (5) reuse of some CESR components in CESR-B; and (6) disposal of some components, with possibly a few pieces disposed of as low-level radioactive waste. Component design, assembly, and construction at Cornell would take 3-4 years. Operation is expected to begin in 1998, with an estimated life of about 15 years.

Alternatives

Two alternatives to the proposed action were considered: (1) No action; and (2) the construction and operation of a B-Factory at a DOE facility other than SLAC or Cornell. Under the no action alternative, the B-Factory would not be built, and existing SLAC and Cornell facilities would continue to operate until the termination of their useful lifetime. At SLAC, the existing PEP facility would remain idle until new uses are determined or it is decommissioned. At Cornell, the existing CESR would continue to operate for about five years. The alternative to construct and operate a B-Factory at another DOE facility was not evaluated further in the EA due to its lack of feasibility in meeting the

objectives of time, cost, and technical potential.

Environmental Impacts

The EA analyzed the impacts of constructing and operating a B-Factory at both the SLAC and Cornell sites for effects from construction, normal operations, accidents, decontamination and decommissioning, and cumulative and long term impacts. The EA considered impacts to air and water quality, land use, biological resources, noise, traffic, and hazardous materials usage. As described in the EA, there would be no significant impacts from construction or upgrade of the existing facilities at SLAC or Cornell.

PEP-II Alternate Site

Operation of the PEP-II would not significantly affect air and water quality, worker health and safety, public health and safety, and waste management systems. The impacts of ionizing radiation produced during operation are anticipated to be negligible. Nearly all of the radiation would be absorbed by the self-shielding copper vacuum chamber, the concrete tunnel walls, and the surrounding earth. Induced radioactivity could occur in a small number of components or devices. The number of workers that would be exposed to measurable amounts of radiation from PEP-II in the course of normal operations would not exceed 50. Based on a dose-to-risk conversion factor of 4×10^{-4} latent cancer fatalities per person-rem for adult workers, the risk of fatal cancer to the potentially exposed population of 50 workers over the 15-year operating period is less than 0.03. There are no persons residing within 0.3 km of the SLAC boundary. The population residing between 0.3 km and 0.5 km from the SLAC boundary is about 1200 people. Based on a dose-to-risk conversion factor of 5×10^{-4} latent cancer fatalities per person-rem for the whole population, the estimated latent cancer fatalities for this population over the 15-year operation of PEP-II is less than 0.002. (A conversion factor of 5×10^{-4} is used for the general population to reflect the presence of children, who appear to be at greater risk of dying from cancer as a result of exposure to radiation than adults.)

Impacts from radiological accidents would not significantly affect worker or public health and safety at PEP-II. The most serious accident involving worker and/or public exposure to radiation would be beam dumps from component and sub-system failures. The maximum potential dose equivalent at the PEP-II site boundary of the most serious radiation accident would be less than

0.005 mrem in a year, far below the operating limit of 10 mrem/year. For a population of 1,200, an exposure of 0.005 mrem/year results in a population dose of 0.09 person-rem over 15 years; less than 5×10^{-5} latent cancer fatalities.

Decontamination and decommissioning (D&D) activities at PEP-II are anticipated to have negligible impacts to worker and public health and safety. Non-radiological effects would be similar to those involved in facility construction: potential short-term effects to air and water quality, noise, dust, vehicle emissions, storm-water management, and waste handling and disposal. Radiological impacts are anticipated to be minimal through controlled storage of material with residual radioactivity and shipment to an approved low-level waste disposal facility.

No cumulative or measurable long-term environmental impacts are expected from the proposed PEP-II facility. The contributions of waste products from construction, operation, maintenance, and D&D activities would add to waste accumulation and the environmental impacts associated with disposal facilities. Their contribution to such impacts would be negligible. PEP-II operations are not expected to cause soil or groundwater activation. The radiological dose equivalent attributable to PEP-II operations would have negligible contributions to the cumulative impact of SLAC operations. There are no current or reasonably foreseeable major construction projects in the immediate vicinity of SLAC; thus, the PEP-II facility would not have any substantial effects on local offsite construction.

CESR-B Alternate Site

Operation of the CESR-B would not significantly affect air and water quality, worker health and safety, public health and safety, and waste management systems. The impacts of ionizing radiation produced during operation are anticipated to be negligible. Nearly all of the synchrotron radiation would be absorbed by the copper vacuum chamber. Based on an occupation risk factor of 4×10^{-4} fatal cancers/person-rem, the number of potential fatal cancers for radiation workers is 0.024, and for non-radiation workers is 0.0006. The dose to the general public over the 15-year operational life of the facility is estimated to be less than 0.1 person-

rem, or less than 0.00005 fatal cancers (using 5×10^{-4} fatal cancers/person-rem risk factor).

No cumulative or measurable long-term environmental impacts are expected from the proposed CESR-B facility. The contributions of waste products from construction, operation, maintenance, and D&D activities would be negligible. CESR-B operations are not expected to cause soil or groundwater activation. The radiological dose equivalent attributable to CESR-B operations would make a negligible contribution to the cumulative impact of radiological operations at Cornell. The only other source of radiation exposure on campus is the Ward research reactor which shares no facilities with CESR, and would not be a source of cumulative exposures to workers or the public. The cumulative radioactive exposures to the public are anticipated to be negligible.

Determination

Based on the analyses in the EA and the comments received on the proposed FONSI, the DOE has determined that the proposed construction and operation of a B-Factory at SLAC does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the NEPA. Therefore, an environmental impact statement is not required.

Issued in Washington, DC this 13th day of December, 1993.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 93-31682 Filed 12-28-93; 8:45 am]

BILLING CODE 6450-01-P

Energy Information Administration

Inventory of Current DOE Reporting and Recordkeeping Requirements

AGENCY: Energy Information Administration, DOE.

ACTION: Department of Energy's inventory of energy information collections, including reporting and recordkeeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) herein publishes an inventory of energy information collections (including reporting and recordkeeping requirements) which had

Office of Management and Budget (OMB) approval of October 1, 1993, the first day of Fiscal Year (FY) 1994. The inventory is published for the use of respondents and other interested parties. DOE's management and procurement collections are the responsibility of DOE's Assistant Secretary for Human Resources and Administration and are not included in these notices.

The listing that follows includes DOE energy information collections that had OMB approval as of October 1, 1993. For each information collection utilizing a structured form, Part I lists the current DOE control or form number, the title of the requirement, the OMB control number, and the OMB approval expiration date. Part II lists those information collections which do not utilize structured forms and the corresponding citations from the Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT:

Herbert Miller, Energy Information Administration (EI-73), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 254-5346. Information on the availability of single, blank copies of those information collections utilizing structured forms can be obtained by contacting the National Energy Information Center (EI-231), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8800.

SUPPLEMENTARY INFORMATION: As DOE's energy information collections are submitted for review and approval to OMB during FY 1994 (October 1, 1993 through September 30, 1994), Federal Register notices will be published informing the public to that effect. Such notices not only provide an opportunity for the public to review and comment on the collections but also notify the public of proposed changes to the inventory. Questions concerning the inventory or the changes that take place during FY 1994 may be directed to Mr. Miller at the address above.

STATUTORY AUTHORITY: Section 2(a) of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), which amended Chapter 35 of title 44 United States Code (See 44 U.S.C. 3506(a) and (c), (1).

Issued in Washington, DC, December 20, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

PART I.—DOE ACTIVE INFORMATION COLLECTIONS

[October 1, 1993 Inventory]

DOE number	Title	OMB control number	Expiration date
Civilian Radioactive Waste Management			
NWPA-830R-A-G	Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Waste (R-Contract is on standby; A-F-Annual report is on standby; G-Quarterly Report—Standard Remittance Advice is active).	19010260	2/28/94
RW-859	Nuclear Fuel Data	19010287	12/31/94
Conservation and Renewable Energy			
CE-63A/B	Annual Solar thermal Collector Manufacturers Survey and Annual Photovoltaic Module/cell Manufacturers Survey.	19010292	08/31/95
Domestic and International Energy Policy			
EIA-767(2)	Steam Electric Plan Operation and Design Report	19010267	01/31/96
Emergency Planning and Operations			
OE-411	Coordinated Regional Bulk Power Supply Program Report	19010286	10/31/96
OE-417R	Power System Emergency Reporting Procedures	19010288	10/31/95
Energy Information Administration			
EIA-1	Weekly Coal Monitoring Report—General Industries and Blast Furnaces (Standby Form)	19050167	03/31/96
EIA-3	Quarterly Coal Consumption Report—Manufacturing Plants	19050167	03/31/96
EIA-3A	Annual Coal Quality Report—Manufacturing Plants	19050167	03/31/96
EIA-4	Weekly Coal Monitoring Report—Coke Plants (Standby Form)	19050167	03/31/96
EIA-5	Coke Plant Report—Quarterly	19050167	03/31/96
EIA-5A	Annual Coal Quality Report—Coke Plants	19050167	03/31/96
EIA-6	Coal Distribution Report	19050167	03/31/96
EIA-7A	Coal Production Report	19050167	03/31/96
EIA-14	Refiners' Monthly Cost Report	19050174	09/30/96
EIA-20	Weekly Telephone Survey of Coal Burning Utilities (Standby Form)	19050167	03/31/96
EIA-23	Annual Survey of Domestic Oil and Gas Reserves	19050057	12/31/94
EIA-23P	Oil and Gas Well Operator List Update Report	19050157	12/31/94
EIA-28	Financial Reporting System	19050149	12/31/93
EIA-64A	Annual Report of the Origin of Natural Gas Liquids Production	19050057	12/31/94
EIA-176	Annual Report of Natural and Supplemental gas Supply and Disposition	19050175	12/31/93
EIA-182	Domestic Crude Oil First Purchase Report	19050174	09/30/96
EIA-191	Underground Gas Storage Report	19050175	12/31/93
EIA-191S	Weekly Underground Gas Storage Report (Standby Form)	19050175	12/31/93
EIA-254	Semiannual Report on Status of Reactor Construction	19050160	12/31/94
EIA-412	Annual Report of Public Electric Utilities	19050129	12/31/95
EIA-475A/H	Residential Energy Consumption Survey	19050092	06/30/96
EIA-627	Annual Quantity and Value of Natural Gas Report	19050175	12/31/93
EIA-759	Monthly Power Plant Report	19050129	12/31/95
EIA-782A	Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report	19050174	09/30/96
EIA-782B	Resellers'/Retailers' Monthly Petroleum Product Sales Report	19050174	09/30/96
EIA-782C	Monthly Report of Prime Supplier Sales of Petroleum Products Sold for Local Consumption	19050174	09/30/96
EIA-800	Weekly Refinery Report	19050165	01/31/96
EIA-801	Weekly Bulk Terminal Report	19050165	01/31/96
EIA-802	Weekly Product Pipeline Report	19050165	01/31/96
EIA-803	Weekly Crude Oil Stocks Report	19050165	01/31/96
EIA-804	Weekly Imports Report	19050165	01/31/96
EIA-807	Propane Telephone Survey	19050165	01/31/96
EIA-810	Monthly Refinery Report	19050165	01/31/96
EIA-811	Monthly Bulk Terminal Report	19050165	01/31/96
EIA-812	Monthly Product Pipeline Report	19050165	01/31/96
EIA-813	Monthly Crude Oil Report	19050165	01/31/96
EIA-814	Monthly Imports Report	19050165	01/31/96
EIA-816	Monthly Natural Gas Liquids Report	19050165	01/31/96
EIA-817	Monthly Tanker and Barge Movement Report	19050165	01/31/96
EIA-818	International Energy Agency Imports/Stocks-at-Sea Report	19050165	01/31/96
EIA-819A	Annual Oxygenate Capacity Report	19050165	01/31/96
EIA-819M	Monthly Oxygenate Telephone Report	19050165	01/31/96
EIA-820	Annual Refinery Report	19050165	01/31/96
EIA-821	Annual Fuel Oil and Kerosene Sales Report	19050174	09/30/96
EIA-822A/D	Oxygenate Operations Identification Survey	19050165	01/31/96
EIA-825	Petroleum Facility Operator Identification Survey	19050165	01/31/96

PART I.—DOE ACTIVE INFORMATION COLLECTIONS—Continued
[October 1, 1993 Inventory]

DOE number	Title	OMB control number	Expiration date
EIA-826	Monthly Electric Utility Sales and Revenue Report with State Distributions	19050129	12/31/95
EIA-846A/D	Manufacturing Energy Consumption Survey	19050169	11/31/94
EIA-851	Domestic Uranium Mining Production Report	19050160	12/31/94
EIA-856	Monthly Foreign Crude Oil Acquisition Report	19050174	09/30/96
EIA-857	Monthly Report of Natural Gas Purchases and Deliveries to Consumers	19050175	12/31/93
EIA-857S	Weekly Report of Natural Gas Supplies and Deliveries to Consumers (Standby Form)	19050175	12/31/93
EIA-858	Uranium Industry Annual Survey	19050160	12/31/94
EIA-860	Annual Electric Generator Report	19050129	12/31/95
EIA-861	Annual Electric Utility Report	19050129	12/31/95
EIA-863	Petroleum Product Sales Identification Survey	19050174	09/30/96
EIA-867	Annual Nonutility Power Producer Report	19050129	12/31/95
EIA-871A/F	Commercial Buildings Energy Consumption Survey	19050145	06/30/95
EIA-876A/E	Residential Transportation Energy Consumption Survey	19050068	12/31/93
EIA-877	Winter Heating Fuels Telephone Survey	19050174	09/30/96
EIA-878	Motor Gasoline Price Survey	19050174	09/30/96

Federal Energy Regulatory Commission

FERC-1	Annual Report of Major Electric Utilities, Licensees and Others	19020021	07/31/95
FERC-1-F	Annual Report of Nonmajor Public Utilities and Licensees	19020029	07/31/95
FERC-2	Annual Report of Major Natural Gas Companies	19020028	07/31/96
FERC-2A	Annual Report of Nonmajor Natural Gas Companies	19020030	07/31/96
FERC-6	Annual Report of Oil Pipeline Companies	19020022	06/30/96
FERC-8	Underground Gas Storage Report	19020026	08/31/95
FERC-11	Natural Gas Pipeline Company Monthly Statement	19020032	06/30/96
FERC-73	Oil Pipeline Service Life Data	19020019	08/31/95
FERC-80	Licensed Hydropower Development Recreation Report	19020106	10/31/95
FERC-423	Monthly Report of Cost and Quality of Fuels for Electric Plants	19020024	12/31/93
FERC-523	Application for Authorization of the Issuance of Securities or the Assumption of Liabilities	19020043	09/30/95
FERC-549	Gas Pipeline Rates: Natural Gas Policy Act Title III Transactions	19020086	08/31/94
FERC-561	Annual Report of Interlocking Positions	19020099	10/31/95
FERC-580	Fuel Purchase Practices	19020137	03/31/94
FERC-592	Marketing Affiliates of Interstate Pipelines	19020157	12/31/93
FERC-597	Customer Satisfaction Survey	19020163	01/31/94
FERC-598	Certification of Entities Seeking Exempt Wholesale Generator Status	19020166	04/30/96
FERC-714	Annual Electric Power System Report	19020140	05/31/96
FERC-715	Annual Transmission Planning and Evaluation Report	19020167	05/31/96
FPC-14	Annual Report for Importers and Exporters of Natural Gas	19020027	08/31/95

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EIA-767(3)	Steam Electric Plant Operation and Design Report	19010298	01/31/96
FE-748	Enhanced Oil Recovery Annual Report	19010291	12/31/95
FE-782R	Annual Report of International Electric Export/Import Data	19010296	09/30/94

PART II.—DOE ACTIVE INFORMATION COLLECTIONS (NOT UTILIZING STRUCTURED FORMS)
[October 1, 1993 Inventory]

DOE Number	Title	OMB control number	Expiration date	CFR citation
Economic Regulatory Administration				
ERA-766R	Recordkeeping Requirements of DOE's General Allocation and Price Rules.	19030073	10/31/93	10 CFR 210.1.
Energy Information Administration				
EIA-882T	Generic Clearance for Questionnaire Testing, Evaluation, and Research.	19050186	06/30/96	
Federal Energy Regulatory Commission				
FERC-16A	Monitoring (Omnibus) Report (stand-by authority).	19020105	10/31/95	By FERC Order.
FERC-16AT	Interstate Pipeline Curtailment	19020139	11/30/96	By FERC Order.
FERC-500	Application For License for Hydropower Projects Greater Than 5MW.	19020058	07/31/94	18 CFR 4.38, 4.39, 4.40, 4.41, 4.50, 4.51, 4.200-202.

PART II.—DOE ACTIVE INFORMATION COLLECTIONS (NOT UTILIZING STRUCTURED FORMS)—Continued

[October 1, 1993 Inventory]

DOE Number	Title	OMB control number	Expiration date	CFR citation
FERC-505	Application for License for Water Projects 5MW or Less.	19020115	7/31/94	18 CFR 4.61, 4.71, 4.92, 4.93, 4.107, 4.108, 4.112, 4.113, 4.201-202.
FERC-510	Application for Surrender of Electric License	19020068	05/31/96	18 CFR 6.1, 6.3.
FERC-511	Application for Transfer of Electric License	19020069	10/31/94	18 CFR 9.1, 9.2, 9.10.
FERC-512	Application for Preliminary Permit	19020073	09/30/94	18 CFR 4.31, 4.32, 4.33, 4.81, 4.82.
FERC-515	Hydropower License—Declaration of Intention	19020079	09/30/94	18 CFR 24.1.
FERC-516	Electric Rate Schedule Filings	19020096	05/31/95	18 CFR 35, Subpart A, 35.12-16, 35.26, 35.30, 35.31, 292, 301.
FERC-519	Disposition of Facilities, Mergers, and Acquisitions of Securities.	19020082	03/31/96	18 CFR 33.
FERC-520	Application for Authority to Hold Interlocking Directorate Positions.	19020083	02/28/96	18 CFR 45.
FERC-521	Headwater Benefits	19020087	08/31/95	18 CFR 11.16.
FERC-525	Financial Audits	19020092	02/28/95	18 CFR 101, 201.
FERC-537	Gas Pipeline Certificates: Construction, Acquisition & Abandonment.	19020060	04/30/95	18 CFR 2.79, 157.5-21, 100, 201-218, 159.1, 284.107, 127, 221.
FERC-538	Gas Pipeline Certificate: Initial Service	19020061	01/31/94	18 CFR 156.3, 156.4, 156.5.
FERC-539	Gas Pipeline Certificate: Import/Export Related.	19020062	04/30/94	18 CFR 153.
FERC-541	Gas Pipeline Certificate: Curtailment Plan	19020066	03/31/94	18 CFR 2.78, 281.
FERC-542	Gas Pipeline Rates: Initial Rates, Rate Change, and PGA Tracking.	19020070	03/31/94	18 CFR 154.38, 154.61-154.67.
FERC-542A	Tracking and Recovery of Alaska Natural Gas Transportation System.	19020129	12/31/93	18 CFR 154.201-154.213.
FERC-543	Gas Pipeline Rates: Purchased Gas Adjustment Tracking.	19020152	03/31/94	18 CFR 154.38.
FERC-544	Gas Pipeline Rates: Rate Change (Formal)	19020153	02/28/94	18 CFR 154.63-154.67.
FERC-545	Gas Pipeline Rates: Rate Change (Non-Formal).	19020154	06/30/96	18 CFR 154.63-154.67.
FERC-546	Gas Pipeline Rates: Certificated Rate Filings	19020155	02/28/94	18 CFR 154.62-154.67.
FERC-547	Gas Pipeline Rates: Refund Obligations	19020084	05/31/94	18 CFR 154.38(5)(V)(H), 270.101, 273.301, 273.302.
FERC-549B	Gas Pipeline Rates: Capacity Release Information.	19020169	09/30/96	18 CFR 284(b)(5).
FERC-550	Oil Pipeline Rates: Tariff Filings	19020089	08/31/95	18 CFR 340-345, 347.
FERC-555	Records Retention Requirements	19020098	04/30/95	18 CFR 125, 158, 160.1, 225, 276.108, 277.210, 356.
FERC-556	Cogeneration and Small Power Production	19020075	10/31/94	18 CFR 292.
FERC-566	Report of Utility's Twenty Largest Purchasers	19020114	02/28/95	18 CFR 46.3.
FERC-567	Gas Pipeline Certificates: Annual Reports of System Flow Diagrams and System Capacity.	19020005	08/31/96	18 CFR 260.8, 284.12.
FERC-574	Gas Pipeline Certificates—Hinshaw Exemption.	19020116	08/31/95	18 CFR 152.
FERC-576	Report by Certain Natural Gas Companies on Service Interruptions.	19020004	05/31/95	18 CFR 260.9.
FERC-577	Gas Pipeline Certificates: Environmental Impact Statement.	19020128	12/31/94	18 CFR 2.80, 2.82, 157.14.
FERC-577(A)	Gas Pipeline Certificates: Environmental Impact Statement (Interim Rule).	19020161	12/31/94	18 CFR 2.80, 2.82, 157.14.
FERC-581	Management and Procurement Reporting and Recordkeeping Requirements.	19020130	11/30/96	48 CFR Subtitle A, Chapter 9.
FERC-582	Oil, Gas, and Electric Fees and Annual Charges.	19020132	10/31/96	18 CFR 381.106, 382.105(A), 382.201(B)(4).
FERC-583	Hydroelectric Fees and Annual Charges	19020136	10/31/96	18 CFR 11.1, 11.3, 11.4, 11.6.
FERC-585	Reports on Electric Energy Shortages & Contingency Plans Under PURPA 206.	19020138	12/31/93	18 CFR 294.
FERC-588	Emergency Natural Gas Sale, Transportation and Exchange Transactions.	19020144	06/30/94	18 CFR 284, Subpart I.

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FERC-329R	Regulatory Reporting and Recordkeeping Requirements Pursuant to 10 CFR 500, 501, 503, and 504.	19010297	06/30/95	10 CFR 500, 501, 503, 504, 505, 508, 515.
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PART II.—DOE ACTIVE INFORMATION COLLECTIONS (NOT UTILIZING STRUCTURED FORMS)—Continued
 [October 1, 1993 Inventory]

DOE Number	Title	OMB control number	Expiration date	CFR citation
FE-746R	Import and Export of Natural Gas	19010294 .	01/31/96 ...	10 CFR 205, 590.
FE-750R	Annual Compilation of Proposed and Final List of Utilities Covered by Public Utility Regulatory Policies Act and National Energy Conservation Policy Act.	19010295 .	04/30/94 ...	10 CFR 463.

[FR Doc. 93-31828 Filed 12-28-93; 8:45 am]
 BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER93-925-000, et al.]

New England Power Service, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

December 21, 1993.

Take notice that the following filings have been made with the Commission.

1. New England Power Service

[Docket No. ER93-925-000]

Take notice that on November 22, 1993, England Power Service on behalf of New England Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. PacifiCorp

[Docket No. ER94-264-000]

Take notice that PacifiCorp on December 16, 1993, tendered for filing in accordance with the Commission's Order pertaining to agreements involving final amnesty for jurisdictional service and waiver of notice, issued July 30, 1993 under Docket No. PL93-2-002, the Contract for Sale of Electric Power and Energy and for Operation and Maintenance Services between the United States Bureau of Reclamation and PacifiCorp dated October 6, 1960.

Copies of this filing were supplied to the United States Bureau of Reclamation, the Public Utility Commission of Oregon and the Utah Public Service Commission.

PacifiCorp requests waiver of prior notice requirements be granted.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Electric Power Co.

[Docket No. ER94-242-000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on December 14, 1993, tendered for filing an amendment to the interchange agreement between itself and Madison Gas and Electric Company (MG&E). The amendment would replace Service Schedule A—Limited Term Power and Energy with Service Schedule A—Negotiated Capacity and Energy.

Wisconsin Electric requests an effective date of sixty days after filing. Wisconsin Electric is authorized to state that MG&E joins in the requested effective date.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. El Paso Electric Co.

[Docket No. ER94-241-000]

Take notice that on December 14, 1993, El Paso Electric Company (EPE) requested the Commission to disclaim jurisdiction over an agreement between EPE and Texas-New Mexico Power Company (TNP) which provides the terms and conditions for participation in the construction, operation, maintenance and use of the Amrad to Artesia 345 kV transmission facilities and DC terminal by EPE and TNP, or, if the Commission asserts jurisdiction, to accept the agreements for filing to become effective December 8, 1981.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp; Public Service Company of Colorado

[Docket No. ER94-240-000]

Take notice that on December 14, 1993, PacifiCorp tendered for filing on behalf of Public Service Company of Colorado (PSCo) and itself, in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, revisions to the Power and Transmission Services Agreement among PSCo, Tri-State Generation and Transmission Association, Inc. (Tri-State) and PacifiCorp (PSCo Rate

Schedule FERC No. 50 and PacifiCorp Rate Schedule FERC No. 319).

Copies of this filing have been supplied to PSCo, Tri-State, the Colorado Public Utilities Commission, the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER94-236-000]

Take notice that on December 13, 1993, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (the GPU Electric Utilities) tendered for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure (18 CFR 385.205) a proposed rate schedule change relating to the allocation among the GPU electric utilities of their respective Forecast Capacity Responsibility and the determination of their respective Annual Size Factors under the GPU System Power Pooling Agreement. The subject rate change, which was filed in response to the Orders of the Federal Energy Regulatory Commission issued July 30, 1993 and October 19, 1993, provides such data for periods beginning in 1976.

Copies of the filing have been furnished to the Pennsylvania Public Utility Commission and New Jersey Board of Regulatory Commissioners.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Power & Light Co.

[Docket No. ER94-200-000]

Take notice that on November 30, 1993, Puget Sound Power & Light Company (Puget) tendered for filing an initial rate schedule between the United States of America Department of Energy acting by and through the Bonneville Power Administration ("Bonneville"), Public Utility District No. 1 of Chelan

County, Washington ("District") and Puget, executed December 23, 1957 (the "Agreement"). A copy of the filing was served upon Bonneville and District.

Puget states that the Agreement relates to Bonneville's provision of transmission services from District to Puget. The Agreement also provides that the amounts of energy to be delivered by Bonneville to Puget are to be the amounts deemed to be made available to Bonneville by the District, adjusted for losses incurred by Bonneville between its point of interconnection with District and its point or points of delivery to Puget.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corp.

[Docket No. ER94-269-000]

Take notice that on December 16, 1993, New York State Electric & Gas Corporation (NYSEG) tendered for filing an agreement with Steuben Rural Electric Cooperative, Inc. (Cooperative). Pursuant to the agreement, NYSEG agreed to construct certain tap facilities to facilitate transmission service to the Cooperative. NYSEG requests that the Commission consider the Agreement an expired CIAC agreement. NYSEG requests that the Commission consider the Agreement an expired CIAC agreement. In the alternative, NYSEG is filing the agreement as an initial rate schedule, and NYSEG requests an effective date of October 31, 1973. Accordingly, it has requested waiver of the Commission's notice requirements for good cause shown.

NYSEG states that a copy of this filing has been served by mail upon the Cooperative and upon the Public Service Commission of the State of New York.

Comment date: January 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Great Bay Power Corp.

[Docket No. ER94-215-000]

Take notice that on November 29, 1993, Great Bay Power Corporation (Great Bay) tendered for filing an executed copy of the service agreement for Green Mountain and Great Bay under the Tariff submitted on September 1, 1993 and amended October 14, 1993 in Docket No. ER93-924-000.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Co.

[Docket Nos. ER93-208-000, ER93-209-000, ER93-210-000 and ER93-215-000]

Take notice that on December 15, 1993, Consolidated Edison Company of New York Inc. (Con Edison), in response to the Commission's Staff request for additional information, tendered for filing additional information relative to the below-listed interconnection agreements.

Docket No.	Persons receiving service
ER93-208-000	Orange & Rockland Utilities, Inc. (O&R).
ER93-209-000	New York Power Authority (NYPA).
ER93-210-000	Central Hudson Gas & Electric Corporation (CH).
ER93-215-000	NYPA.

Con Edison states that a copy of this filing has been served by mail upon O&R, NYPA and CH.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corp.

[Docket No. ER94-252-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on December 15, 1993, tendered for filing an agreement between Niagara Mohawk and Indeck Energy Services of Corinth, Inc. (Indeck) dated June 1, 1992 providing for the terms and conditions of an interconnection between Indeck's cogeneration facility and Niagara Mohawk's transmission system.

The effective date of June 1, 1992 is requested by Niagara Mohawk.

Copies of this filing were served upon Indeck and the New York State Public Service Commission.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Otter Tail Power Co.

[Docket No. ER94-251-000]

Take notice that on December 15, 1993, Otter Tail Power Company (Otter Tail) tendered for filing a list of retail shared service contracts that may or may not be deemed under FERC jurisdiction. Otter Tail states that this filing is being done as a result of Docket No. PL93-3-002, Prior Notice and Filing Requirements Under Part II of the Federal Power Act.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. PacifiCorp

[Docket No. ER94-261-000]

Take notice that on December 16, 1993, PacifiCorp tendered for filing, the Agreement for Transmission Services between Idaho Power Company and Pacific Power & Light Company (now PacifiCorp) dated September 10, 1980. In addition, PacifiCorp has requested a rate schedule designation for the Restated Transmission Services Agreement between PacifiCorp, dba PacifiCorp Electric Operations, and Idaho Power dated February 6, 1992 which has already been filed and accepted by the Commission. PacifiCorp has requested a waiver of the Commission's prior notice requirements.

Copies of this filing have been supplied to Idaho Power Company, the Idaho Public Utilities Commission, the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Portland General Electric Co.

[Docket No. ER94-258-000]

Take notice that on December 15, 1993, Portland General Electric Company (PGE) tendered for filing the Northern Intertie and Network Transmission Agreement (Agreement) Between the Bonneville Power Administration (BPA) and PGE. Under the Agreement PGE purchases transmission services from BPA and PGE is responsible for the replacement of transmission losses and, under some circumstances, the return of energy to BPA.

Waiver of the Commission's notice requirements is requested during the general amnesty period announced by the Commission in its order of July 30, 1993 in Docket No. PL93-2-002, to allow the Agreement to be effective January 1, 1993.

Copies of this agreement have been served on the distribution list, as included in the filing.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Northern Indiana Public Service Co.

[Docket No. ER94-259-000]

Take notice that Northern Indiana Public Service Company (Northern Indiana), on December 15, 1993, tendered for filing a proposed initial rate schedule for inclusion in its FERC Electric Service Tariff in order to provide service to Greenfield Mills, Inc. (Greenfield Mills), the owner and

operator of a hydroelectric facility in Lagrange County, Indiana. Pursuant to the rate schedule, Northern Indiana will purchase power generated by Greenfield Mills and, should Greenfield Mills need electricity for its operations, Northern Indiana will provide such "backfeed" power from its system supply. Northern Indiana will purchase power generated by Greenfield Mills during the 18-hour period from 6:00 a.m. to midnight at a rate of 7 mills per kilowatt hour (kWh); power generated during the remaining six hours of the day will be purchased by Northern Indiana at a rate of 3 mills per kWh. Northern Indiana sells backfeed to Greenfield Mills by offsetting two kWh of power purchased for every one kWh of power sold.

Northern Indiana is filing this rate schedule under the general "amnesty" provided in the Commission's Final Order in Docket No. PL93-2-002, 64 FERC ¶ 61,139 (1993). Northern Indiana and Greenfield Mills executed the contract at issue in this proceeding on May 1, 1959. Northern Indiana seeks Commission approval, without modification or condition, of the rate schedule as filed and a waiver of the 60-day notice requirement contained in the Federal Power Act. In addition, due to the de minimis nature of its contract with Greenfield Mills, Northern Indiana seeks waivers of certain of the filing requirements found in 18 CFR 35.12. Copies of Northern Indiana's application are on file with the Commission and are available for public inspection.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. PacifiCorp

[Docket No. ER94-255-000]

Take notice that on December 15, 1993, PacifiCorp, tendered for filing, in accordance with 18 CFR 35.13(a)(2)(ii) of the Commission's Rules and Regulations, PacifiCorp's proposed FERC Electric Tariff, Original Volume No. 8 (Tariff).

PacifiCorp respectfully requests pursuant to § 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that this filing be accepted for filing effective on August 2, 1991 or in the alternative effective on August 26, 1935, the approval date of the Public Utility Act of 1935.

Copies of this filing were supplied to the Public Utility Commission of Oregon.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. South Carolina Electric & Gas Co.

[Docket No. ER94-256-000]

Take notice that South Carolina Electric & Gas Company on December 15, 1993, tendered for filing an Interchange Agreement between South Carolina Electric & Gas Company and Oglethorpe Power Corporation.

Under the proposed Interchange Agreement between South Carolina Electric & Gas Company and Oglethorpe Power Corporation, the parties agree to service schedules for Reserve, Short Term Power, Limited Term Power, Economy Interchange and Other Energy Transactions.

Copies of this filing were served upon Oglethorpe Power Corporation.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. Allegheny Power Service Corporation on behalf of Mongahela Power Company, et al.

[Docket No. ER94-246-000]

Take notice that on December 14, 1993, Allegheny Power Service Corporation on behalf of Mongahela Power Company, The Potomac Edison Company and West Penn Power Company (The APS Companies) and Virginia Electric and Power Company, filed seven borderline service agreements within the Central Maine amnesty period pursuant to the Commission's Final Order—Prior Notice and Filing Requirements—Docket No. PL93-2-002. Allegheny Power Service Corporation requests waiver of notice requirements and asks the Commission to honor the proposed effective dates specified in the agreements.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

19. Iowa Electric Light and Power Co.

[Docket No. ER94-243-000]

Take notice that Iowa Electric Light and Power Company (Iowa Electric) on December 14, 1993, tendered for filing various documents evidencing Iowa Electric's agreement to provide transmission services to Iowa Public Service Company (IPS). Iowa Electric requests the Commission, pursuant to the amnesty provisions issued in the Final Order in Docket No. PL93-2-002, to waive its prior notice requirements and authorize an effective date for the rate schedule of October 1, 1987.

A copy of the filing was served upon Iowa State Utilities Board and Midwest Power Systems Inc., the successor to IPS.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

20. PacifiCorp

[Docket No. ER94-263-000]

Take notice that on PacifiCorp, on December 16, 1993, tendered for filing in accordance with Commission's Order pertaining to agreements involving final amnesty for jurisdictional service and waive of notice, issued July 30, 1993 under Docket No. PL93-2-002, the Electric Service Agreement between Emerald People's Utility District (Emerald) and PacifiCorp dated November 9, 1983.

Copies of this filing were supplied to Emerald, the Public Utility Commission of Oregon, and the Utah Public Service Commission.

PacifiCorp requests that a waiver of prior notice requirements be granted.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

21. Iowa Electric Light and Power Co.

[Docket No. ER94-247-000]

Take notice that Iowa Electric Light and Power Company (Iowa Electric) on December 14, 1993, tendered for filing an Operating and Transmission Agreement (Agreement), dated January 1, 1991, between Iowa Electric and Central Iowa Power Cooperative (CIPCO). Under the terms of the Agreement, the parties have integrated the operations of portions of their generating and transmission systems. Iowa Electric requests the Commission, pursuant to the amnesty provisions issued in the Final Order in Docket No. PL93-2-002, to waive its prior notice requirements and authorize an effective date for the rate schedule of January 1, 1991.

A copy of the filing was served upon Iowa State Utilities Board and CIPCO.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

22. Wisconsin Public Service Corporation, et al.

[Docket No. ER94-245-000]

Take notice that on December 14, 1993, Wisconsin Public Service Corporation (WPS), Wisconsin Power and Light Company (WPL), Wisconsin Electric Power Company (WEPCO) and Madison Gas and Electric Company (MGE)(collectively Joint Owners) requested that the Commission not require the filing of (1) an agreement for the construction and operation of the Edgewater 5 generating unit, together with amendments and (2) sections of

joint operating manuals which provide for the sharing of costs of transmission substations associated with the Kewaunee, Columbia and Edgewater 4 and 5 generating units. However, if the Commission should decide to require that the agreements and manuals be filed, the Edgewater 5 agreement and manuals are tendered for filing.

Comment date: January 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

23. PacifiCorp

[Docket No. ER94-262-000]

Take notice that PacifiCorp on December 16, 1993, tendered for filing in accordance with the Commission's Order pertaining to agreements involving final amnesty for jurisdictional service and waiver of notice, issued July 30, 1993 under Docket No. PL93-2-002, agreements which contain provisions involving a return of energy losses associated with the purchase of Townsend-Garrison Transmission service from the Bonneville Power Administration (Bonneville).

Copies of this filing were supplied to Bonneville, The Montana Power Company, Portland General Electric Company, Puget Sound Power & Light Company, The Washington Water Power Company, the Public Utility Commission of Oregon, and the Utah Public Service Commission.

PacifiCorp requests waiver of prior notice requirements be granted and that the filed agreements be accepted for filing effective as indicated for the agreement.

Comment date: January 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

24. PacifiCorp

[Docket No. ER94-267-000]

Take notice that PacifiCorp on December 16, 1993, tendered for filing in accordance with the Commission's Order pertaining to agreements involving final amnesty for jurisdictional service and waiver of notice, issued July 30, 1993 under Docket No. PL93-2-002, the Transmission and Interconnection Agreement between The Washington Water Power Company and PacifiCorp, effective January 1, 1993.

Copies of this filing were supplied to The Washington Water Power Company, the Public Utility Commission of Oregon and the Utah Public Service Commission.

PacifiCorp requests waiver of prior notice requirements be granted.

Comment date: January 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

25. Southern California Edison Company

[Docket No. ER94-268-000]

Take notice that on December 16, 1993, Southern California Edison Company (Edison) tendered for filing an Amendment to the Power Contract designated Rate Schedule FERC No. 112, which has been executed by Edison and the California Department of Water Resources (CDWR): Amendment No. 3 to the Power Contract.

The Amendment provides for revised amounts of firm transmission service for an existing transmission service path.

The Amendment is proposed to become effective when executed by the Parties and accepted for filing by the Commission.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the California Department of Water Resources.

Comment date: January 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 93-31805 Filed 12-28-93; 8:45 am]
BILLING CODE 6717-01-P

[Docket No. ER94-239-000, et al.]

Wisconsin Public Service Corp., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

December 21, 1993.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Public Service Corp.

[Docket No. ER94-239-000]

Take notice that on December 14, 1993, Wisconsin Public Service Corporation (WPSC) requested the Commission to disclaim jurisdiction over an executed Transmission Facilities Extension Agreement between WPSC and Rhinelander Paper Company which provides for the construction at Rhinelander's expense of a radial 115 Kv transmission line which WPSC will own and over which WPSC will provide Rhinelander with retail service when the line is completed by May of 1995. If the Commission asserts jurisdiction, WPSC tenders the agreements for filing.

WPSC requests the Commission to act on this submission within 60 days.

Comment date: January 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Electric Power Co.

[Docket No. ER94-237-000]

Take notice that on December 13, 1993, Wisconsin Public Service Corporation (WPSC) requested the Commission to disclaim jurisdiction over an agreement under which WPSC provides retail electric service to the Wausau Center shopping mall in Wausau, Wisconsin (Wausau Center), under WPSC's Cp-1 large commercial and industrial retail rate, or, if the Commission asserts jurisdiction, to accept the agreement for filing to become effective August 3, 1983.

Comment date: January 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Service Co.

[Docket No. ER94-234-000]

Take notice that on December 13, 1993, New England Power Service Company (NEPS) on behalf of New England Power Company tendered for filing a letter stating that NEP has entered into agreements with certain transmission customers regarding manual load shedding procedures.

Comment date: January 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Co.

[Docket No. ER94-235-000]

Take notice that on December 13, 1993, Northeast Utilities Service Company (NUSCO) tendered for filing a letter, on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company and Holyoke Water Power Company, stating that it was filing a changed rate schedule for sales of system power to Chicopee Municipal Lighting Plant.

NUSCO requests that the change in rate schedule become effective on December 1, 1993 and that such rate schedule change supersede FERC Rate Schedule Nos. CL&P 504 and HWP 49 at that time.

Comment date: January 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corp.

[Docket No. ER94-205-000]

Take notice that on November 30, 1993, Central Vermont Public Service Corporation (CVPS) tendered for filing a letter stating that CVPS does not plan to file a forecast 1994 report for the FERC Electric Tariff, Original Volume No. 4.

Comment date: January 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin)

[Docket No. ER93-412-001]

Take notice that on December 15, 1993, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (hereafter jointly NSP) tendered for filing its Compliance Filing to the Commission's "Order Accepting and Suspending Rates, Subject to Refund" dated November 30, 1993 in Docket No. ER93-412-000.

Pursuant to the Commission Order, NSP's proposed 3rd Substitute Original Sheet No. 200 (Rate Schedule P) and service schedule amendments are to be effective May 1, 1993.

Comment date: January 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Union Electric Co.

[Docket No. ER94-238-000]

Take notice that on December 13, 1993, Union Electric Company (UE) tendered for filing a System Participation Power Agreement dated April 28, 1993, under the provisions of the Interconnection Coordinating Agreement Northern States Power Complaint, et al and UE dated January 7, 1965. UE asserts that the purpose of the Agreement is to set out specific terms for system participation power transactions.

UE requests that the filing be permitted to become effective May 1, 1993.

Comment date: January 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Co.

[Docket No. ER94-248-000]

Take notice that on December 14, 1993, Arizona Public Service Company

(APS) tendered for filing the Nonfirm Transmission Service Agreement for Arizona between El Paso Electric Company (EPE) and Arizona Public Service Company (APS or Company) (EPE Agreement) and the Edison-Arizona Interruptible Transmission Service Agreement between Southern California Edison Company (SCE) and APS (SCE Agreement).

The EPE Agreement provides for EPE to provide nonfirm transmission service to APS and the SCE Agreement provides for SCE to provide interruptible transmission service to APS.

Copies of this filing have been served upon EPE, SCE and the Arizona Corporation Commission.

Comment date: January 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Central Power and Light Co.

[Docket No. ER94-249-000]

Take notice that on December 14, 1993, Central Power and Light Company (CPL) submitted to the Commission a Construction, Ownership and Operating Agreement under which CPL will be entitled to reimbursement from the Public Utilities Board of the City of Brownsville, Texas (City) for certain costs of maintaining two recently constructed transmission lines between Brownsville, Texas and Matamoros, Mexico. CPL has requested that the Commission disclaim jurisdiction over the Agreement or, in the alternative, accept the Agreement for filing as a rate schedule under the Federal Power Act.

Copies of the filing have been served upon the City and the Public Utility Commission of Texas.

Comment date: January 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Electric Power Co.

[Docket No. ER94-250-000]

Take notice that Wisconsin Electric Power Company (WEPCO) on December 15, 1993, tendered for filing a Joint Use and Facility Sharing Agreement dated April 30, 1991, and Amendment No. 1 thereto, among Marquette Board of Light and Power (Marquette), Upper Peninsula Power Company (UPPCO), and WEPCO. Under the terms of the Agreement WEPCO shares with other parties, at no charge, the use of transmission line structures and right of way owned by WEPCO.

WEPCO states that its filing is being made pursuant to the Final Order and the Appendix thereto issued July 30, 1993 in Docket No. PL93-2-000.

WEPCO requests that the Commission disclaim jurisdiction over the

Agreement or, in the alternative, that the Commission accept the Agreement for filing and permit it to become effective in accordance with its terms.

Copies of the filing have been served on Marquette, UPPCO, and the Michigan Public Service Commission.

Comment date: January 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-31738 Filed 12-28-93; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP92-715-000; et al.]

Liberty Pipeline Co., et al.; Intent To Resume Preparation of a Draft Environmental Impact Statement for the Proposed Liberty Pipeline Project and Request for Comments on Environmental Issues

December 22, 1993.

In the matter of Liberty Pipeline Co., Docket Nos. CP92-715-000, CP92-715-001; Texas Eastern Transmission Corp., Docket Nos. CP92-719-000, CP92-719-001, CP92-720-000, CP92-720-001, CP93-108-000, CP93-108-001, Transcontinental Gas Pipe Line Corp., Docket Nos. CP92-721-000, CP92-721-001; Texas Gas Transmission Corp., Docket Nos. CP92-730-000, CP92-730-001, CP92-734-000, CP92-734-001.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will resume the preparation of an environmental impact statement (EIS) that will discuss environmental impacts of the construction and operation of natural gas facilities proposed in the Liberty

Pipeline Project.¹ This EIS will be used by the Commission in its decision-making process (whether or not to approve the individual projects).

A number of Federal agencies are being asked to indicate whether they wish to cooperate with us in the preparation of the EIS. These agencies are listed in Appendix 1 and may choose to participate once they have evaluated each proposal relative to their agencies' responsibilities.²

Summary of the Proposed Projects

Liberty Pipeline Company (Liberty) wants Commission authorization to transport up to 500,000 dekatherms of natural gas per day (Dthd) for six local natural gas distribution companies and electric generation companies and to construct and operate the following facilities needed to transport those additional volumes:

- 38.2 miles of new pipeline;
- One new meter station; and
- Two new delivery taps.

About 29.8 miles of the proposed new pipeline would be located under water between Middlesex County, New Jersey and the Borough of Queens, New York.

Texas Eastern Transmission Corporation (Texas Eastern) has an existing natural gas pipeline system consisting of various diameter pipe that extends from the State of Texas and offshore Louisiana through the Appalachian area to the Eastern Seaboard in the Philadelphia and New York area. Texas Eastern wants Commission authorization to expand and modify its facilities to transport up to an additional 255,744 Dthd to various local gas distribution companies and electric generation companies and to construct and operate the following facilities needed to transport those volumes:

- 134.1 miles of loop, replacement, and new lateral pipeline in 13 segments;³

¹ Liberty Pipeline Company's, Texas Eastern Transmission Corporation's, Transcontinental Gas Pipe Line Corporation's, and Texas Gas Transmission Corporation's applications were filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

² The appendices referenced in this notice are not being printed in the *Federal Register*. Copies are available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street, NE., Washington, DC 20426 or call (202) 208-1371. Copies of the appendices were sent to all those receiving this notice in the mail.

³ A loop is a segment of pipeline that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through that part of the pipeline system. A replacement allows more gas to be moved through a pipeline by replacing a segment of pipe with stronger or larger diameter pipe, usually in the same ditch. A lateral is a pipeline that branches off

- One new compressor station with a total of 4,600 horsepower (hp) of compression, and 27,800 hp of additional compression at seven existing compressor stations;

- Two new meter stations; and
- Minor modifications at other existing meter and compressor stations.

Transcontinental Gas Pipe Line Corporation (Transco) has an existing natural gas pipeline system consisting of various diameter pipe that extends from its principal sources of natural gas supply in Texas, Louisiana, Mississippi, and the offshore Gulf of Mexico area, through the states of Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to its end in the New York City metropolitan area. Transco wants Commission authorization to expand and modify its facilities to transport up to an additional 115,000 Dthd to various gas distribution companies and electric generation companies and to construct and operate the following facilities needed to transport those volumes:

- 18.3 miles of loop and new lateral pipeline in three segments;
- 12,000 hp of additional compression at one existing compressor station;
- one new tap;
- one new meter station; and
- minor modification of one existing regulator station.

Transco also proposes to hydrostatically test and upgrade 29.4 miles of existing pipeline.

Texas Gas Transmission Corporation (Texas Gas) has an existing natural gas pipeline system located in Texas, onshore and offshore Louisiana, Arkansas, Mississippi, Tennessee, Kentucky, Indiana, Illinois, and Ohio. Texas Gas wants Commission authorization to expand and modify its facilities to transport up to an additional 137,803 Dthd to various gas distribution companies and electric generation companies and to construct and operate the following facilities needed to transport those volumes:

- 51.3 miles of loop pipeline in five segments.

The general locations of the facilities proposed by Liberty, Texas Eastern, Transco, and Texas Gas are shown in Appendices 2 through 4. A detailed listing of the facilities is in Appendices 5 and 6.

Three of the customers receiving gas from the Liberty Pipeline Project will use the natural gas to fuel new electric cogeneration plants. Although these facilities are not under the jurisdiction

the mainline delivery system and serves to transport gas to an outlying region.

of the FERC, they will be discussed in the EIS and are included in appendix 6.

Background

On September 21, 1992 and December 14, 1992, Liberty, Texas Eastern, Transco, and Texas Gas applied to the Commission for authorization to construct new facilities and expand existing facilities to transport approximately 541,600 Dthd of natural gas through their systems as part of the Liberty Pipeline Project.⁴ We issued the original Notice of Intent for the project on January 22, 1993, and conducted a thorough analysis of those proposals. However, because project changes were indicated by the applicants, we issued a notice of postponement for the project on July 16, 1993. By November 2, 1993, the applicants amended their proposals to reflect the following:

- A delay in the initial in-service date from November 1, 1994 to November 1, 1995;
- A phasing of the project so that some service would be provided beginning November 1, 1995, and the remainder would be provided beginning November 1, 1996;
- Changes in the locations of some of Texas Eastern's proposed loops and replacements, as necessary to allow the phasing of the project; and
- Changes in the locations of some of Texas Gas' proposed loops to avoid certain topographical constraints and residential areas.

The proposed facilities described in Appendices 5 and 6 reflect the above changes to the project. Appendix 7 lists all facilities which we have not yet studied.

Areas Previously Studied

In addition to the previous analysis we began for the Liberty Pipeline Project, some of Texas Gas' proposed facilities were previously studied in the ANR Phase II Project environmental assessment (EA) (Docket Nos. CP90-688-000, et al.).

All analyses previously conducted as part of the ANR Phase II EA, and mitigation methods authorized by the Commission in its Order of June 11, 1991, will be deemed still valid unless the Commission is otherwise notified by agencies or interested parties. Likewise, we request updated environmental information about areas that remain in the project, if the information supplied during the original Liberty Project analysis is no longer valid.

⁴ Part of the originally proposed Liberty Pipeline Project was for the transportation of natural gas to customers in Elizabethtown, New Jersey (Docket No. CP92-716-000) and has since been dropped from the proposal.

Land Requirements for Construction

Pipelines

The proposed loops would generally be built parallel and adjacent to Texas Eastern's, Transco's, and Texas Gas' existing pipelines, using as much of the existing rights-of-way as possible. The majority of the proposed pipeline segments would be adjacent to existing pipeline or road, railroad, or electric transmission line rights-of-way. The land portion of Liberty's new pipeline would be constructed almost entirely within city streets.

The companies would use rights-of-way ranging in width from 50 to 100 feet, depending on pipe diameter, topography, and environmental concerns. After construction, the disturbed area would be restored, and a 0- to 50-foot-wide right-of-way in addition to existing rights-of-way would be permanently maintained. The remainder of the land would revert to its preconstruction use.

Aboveground Facilities

Liberty would construct the Howard Beach Meter Station on a 1.4-acre site in Queens County, New York. Texas Eastern would construct its proposed Glen Karn Compressor Station on 6 acres of a 48-acre site in Darke County, Ohio; the Leidy Compressor and Meter Stations on an approximate 40-acre site in Clinton County, Pennsylvania; and the South Amboy Meter Station on a 1.8-acre site in Middlesex County, New Jersey. Transco would construct its South Amboy Meter Station on a 3.4-acre site adjacent to Texas Eastern's proposed South Amboy Meter Station.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from a major Federal action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The EIS we are preparing will give the Commission the information to do that. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues, and to separate these from issues that are insignificant and do not require detailed study.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general subject headings:

- Geology

- Soils
- Water resources
- Fish and wildlife
- Endangered and threatened species
- Vegetation
- Wetlands
- Air quality and noise
- Land use
- Visual resources
- Recreation
- Socioeconomics
- Cultural resources
- Marine resources

We will also evaluate possible alternatives to the projects, or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas. The City of New York, Borough of Queens has identified an alternative to the proposed route of the land portion of the Liberty Pipeline. This alternative is shown in appendix 8, along with an additional alternative route that we have identified. We will study these and possibly other alternatives along with the proposed routes.

Our independent analysis of the issues will result in the publication of a Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for these proceedings. This Draft EIS will include our analysis of the newly proposed facilities and will reproduce our previous analyses in the ANR Phase II EA and the Liberty Pipeline Project. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received.

We plan to issue the Draft EIS in May 1994. Pending the identification and resolution of environmental issues, we plan to issue the Final EIS in late October 1994.

Currently Identified Environmental Issues

We have already identified a number of issues that we think deserve attention, based on a preliminary review of the proposed facilities and the environmental information provided by Liberty, Texas Eastern, Transco, and Texas Gas. These issues are presented in Appendix 9. Keep in mind that this is a preliminary list; the list of issues will be added to, subtracted from, or changed based on your comments and our own analysis.

Public Participation and Scoping Meetings

You can make a difference by sending a letter with your specific comments or concerns about the projects. You should focus on the potential environmental effects of the proposals, alternatives to the proposals (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426.
- Reference Docket Nos. CP92-715-000, *et al.*;
- Send a copy of your letter to: Mr. Jeffrey Gerber, EIS Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE., room 7312 Washington, DC 20426; and
- Mail your comments so that they are received in Washington, DC on or before February 4, 1994.

During our previous analysis of these projects, we conducted scoping meetings in Lawrence, New York and Edison, New Jersey to provide you with more detailed information and another opportunity to offer your comments on the proposed projects. After we more fully review the changes that have been made to the proposed projects, we may decide to conduct additional scoping meetings. These meetings will be announced in the **Federal Register** and by a mailing to all parties receiving this notice in the mail.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceedings or an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (Title 18 CFR 385.214) which is attached as Appendix 10.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested and/or potentially affected by the proposed project. It is also being sent to all

potential right-of-way grantors to solicit focused comments regarding environmental considerations related to the proposed project. As details of the project become established, representatives of Liberty, Texas Eastern, Transco, or Texas Gas will directly contact landowners, communities, and public agencies concerning any other matters, including acquisition of permits and rights-of-way.

If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EISs, please return the Information Request (appendix 11). If you do not return the Information Request you will be taken off the mailing list.

Additional information about the proposed project is available from Mr. Jeffrey Gerber, EIS Project Manager, at (202) 208-0282.

Lois D. Cashell,

Secretary.

[FR Doc. 93-31730 Filed 12-28-93; 8:45 am]

BILLING CODE 6717-01-P

[Project Nos. 7745-003, et al.]

Hydroelectric Applications; Jerry Kaufman, et al.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Surrender of Exemption.

b. *Project No:* 7745-003.

c. *Date Filed:* November 17, 1993.

d. *Applicant:* Jerry Kaufman.

e. *Name of Project:* Garden Bar Power Plant.

f. *Location:* Camp Far West Ditch, near Lincoln, Placer County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Jerry Mason, 3035 Prospect Park Drive, suite 120, Rancho Cordova, CA 95670, (916) 858-0133.

i. *FERC Contact:* Patricia Massie, (202) 219-2681.

j. *Comment Date:* January 26, 1994.

k. *Description of Application:* Mr. Kaufman intends to remove the power plant. The turbines are old and the cost of putting the plant back into operation is too prohibitive. The liability of having the plant sit is also unacceptable.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

2a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11447-000.

c. *Date filed:* November 2, 1993.

d. *Applicant:* North Unit Irrigation District.

e. *Name of Project:* Wickiup.

f. *Location:* At the existing Bureau of Reclamation Wickiup dam on the Deschutes River, near Bend in Deschutes County, Oregon.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Harold V. Schonkeker, North Unit Irrigation District, 2024 NW Beach Street, Madras, OR 07741, (503) 475-3625.

i. *FERC Contact:* Michael Spencer at (202) 219-2846.

j. *Comment Date:* February 22, 1994.

k. *Description of Project:* The proposed project utilize the Bureau of Reclamation's Wickiup dam and would consist of: (1) two penstocks connected to the dam's outlet works, one would be a 96-inch-diameter, 79-foot-long steel penstock and the other a 96-inch-diameter, 67-foot-long steel penstock; they would converge into a single 120-inch-diameter, 21-foot-long penstock; (2) a powerhouse containing a generating unit with a capacity of 7.0 MW and estimated average annual generation of 26.1 GWh; (3) a 90-foot-long concrete tailrace; and (4) a 9.1-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be \$50,000.

l. *Purpose of Project:* Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

3a. *Type of Application:* Amendment of License.

b. *Project No:* 1835-100.

c. *Date Filed:* October 28, 1993.

d. *Applicant:* Nebraska Public Power District.

e. *Name of Project:* North Platte/Keystone Diversion Dam.

f. *Location:* On the North and South Platte Rivers, Nebraska.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Mr. R. L. Peterson, Nebraska Public Power District, P.O. Box 310, North Platte, NE 69103, (308) 532-9200.

i. *FERC Contact:* Mr. Steve Hocking, (202) 219-2656.

j. *Comment Date:* January 26, 1994.

k. *Description of proposed amendment:* Nebraska Public Power District, licensee for the North Platte/Keystone Diversion Dam Project, filed an application to amend article 401 of their license. Article 401 requires the licensee to develop and maintain eight

islands as nesting habitat for interior least terns and piping plovers. The proposed amendment would allow the licensee to substitute up to four sand pits for four of the eight islands they are required to develop. The proposed amendment requires a plan on how these sand pits would be developed. A draft plan was included in the licensee's filing.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

4a. *Type of Application:* Approval of Report on Recreation Resources and Change in Project Boundary.

b. *Project No:* 3133-012.

c. *Date Filed:* October 20, 1993.

d. *Applicant:* Errol Hydroelectric Ltd. Partnership and Union Water Power Company.

e. *Name of Project:* Errol Project.

f. *Location:* Umbagog Lake and Androscoggin Rivér, Coos County, New Hampshire and Oxford County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Gerald Poulin, President, Union Water Power Company, 150 Main Street, Lewiston, ME 04240, (207) 623-3521.

i. *FERC Contact:* Heather Campbell, (202) 219-3097.

j. *Comment Date:* February 3, 1994.

k. *Description of Project:* The Errol Hydroelectric Ltd. Partnership and Union Water Power Company, licensees for the Errol Project, filed a report on recreation resources. They propose revising the project boundary to incorporate a canoe portage. The revision will affect lands owned by the licensees near the project powerhouse.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

5a. *Type of Application:* Exhibit Drawings.

b. *Project No.:* 2301-011.

c. *Date Filed:* December 15, 1992.

d. *Applicant:* Montana Power Company.

e. *Name of Project:* Mystic Lake Project.

f. *Location:* On the West Rosebud Creek, a tributary of the Stillwater River, in Custer National Forest and Stillwater County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. G. Howard Van Noy, Senior Vice President, Generation and Transmission, Montana Power Company, 40 East Broadway, Butte, MT 59701, (406) 496-5064.

i. *FERC Contact:* Paul Shannon, (202) 219-2866.

j. *Comment Date:* February 3, 1994.

k. Description of Drawings: Montana Power Company requests approval of as-built exhibit K drawings that show the project boundary for the Mystic Lake Project. The exhibits show an additional three acres of federal lands within the project boundary compared to the exhibit K drawings filed in 1980. The three acres are near the project's inverted siphon. The licensee also submitted a copy of the Special Use Permit from the U.S. Forest Service which authorizes the use of the additional lands.

l. This paragraph also consists of the following standard paragraphs: B, C1, and D2.

6a. Type of Application: Project Boat Launch Plan.

b. Project No: 9821-067.

c. Date Filed: December 1, 1993.

d. Applicant: Trafalgar Power Company.

e. Name of Project: Ogdensburg Project.

f. Location: Ogdensburg, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Lippman Tam, Trafalgar Power, Inc., P.O. Box 369, Rome, NY 13442, (504) 273-8891.

i. FERC Contact: Dan Hayes, (202) 219-2660.

j. Comment Date: February 4, 1994.

k. Description of Project: Trafalgar Power, Inc., licensee for the Ogdensburg Project, has filed an application to construct a boat launch and fishermen's access on the Ogdensburg impoundment on the South bank of the Ogdensburg impoundment adjacent to the Spring Street Bridge. The facility will have paved parking for ten vehicles, and paved access from Lake Street.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

7a. Type of Application: Non-project Use of Project Lands—Timber Harvest.

b. Project No: 2329-011.

c. Date Filed: October 6, 1993.

d. Applicant: Central Maine Power Company.

e. Name of Project: Wyman Hydroelectric Project.

f. Location: On the Kennebec River in Kennebec County, Maine.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: Ms. Wendy Bley, Central Maine Power Company, Edison Drive, Augusta, ME 04336, (207) 626-9600.

i. FERC Contact: Steve Hocking (202) 219-2656.

j. Comment Date: January 26, 1994.

k. Description of proposed non-project use of project lands: Central Maine

Power Company (CMP), licensee for the Wyman Hydroelectric Project, proposes a selective timber harvest on 295 acres of project lands. CMP proposes to harvest 76 acres of non-project lands as well. The proposed harvest includes areas just below Wyman Dam and on the eastern shore of Wyman Lake. A timber management plan is included in the proposal.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name,

business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in

all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: December 22, 1993, Washington, DC
Lois D. Cashell,
Secretary.
[FR Doc. 93-31807 Filed 12-28-93; 8:45 am]
BILLING CODE 6717-01-P

[Docket No. CP94-128-000, et al.]

**Koch Gateway Pipeline Co., et al.;
Natural Gas Certificate Filings**

December 21, 1993

Take notice that the following filings have been made with the Commission:

1. Koch Gateway Pipeline Co.

[Docket No. CP94-128-000]

Take notice that on December 13, 1993, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP94-128-000 a request pursuant to §§ 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to place in service an existing six-inch diameter meter station and flow computer located in Nueces County, Texas, under its blanket certificate issued in Docket No. CP82-430-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch states that the metering facilities are presently used to provide section 311 transportation service for Delhi Gas Pipeline Corporation (Delhi). Koch indicates that the authorization sought

herein will provide Delhi with the additional ability to use these facilities as a delivery point on Delhi's blanket transportation agreements with Koch.

Comment date: February 4, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. El Paso Natural Gas Co.

[Docket No. CP94-135-000]

Take notice that on December 15, 1993, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP94-135-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon two segments, totaling approximately 0.463 mile, of the Yuma Line, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

The request for authorization states that by order issued October 15, 1975, El Paso was issued a budget-type certificate of public convenience and necessity in Docket No. CP76-53. The request for authorization further states, that El Paso received blanket certificate authorization in Docket No. CP82-435-000 for routine certificate activities and abandonments of services and facilities, and in Docket No. CP88-433-000 for the transportation of natural gas on behalf of others. It is further stated that pursuant to such budget-type authorization, and at the request of the State of Arizona Highway Department, in 1976, El Paso relocated and replaced a total of approximately 0.50 mile of existing 16 inch loop line serving the Yuma, Arizona area, with approximately 0.463 mile of 6½ inch pipeline in order to accommodate new construction of Interstate 8 Highway in the City of Yuma, Arizona.

It is stated that the Yuma Line is used to transport natural gas received from El Paso's 26 inch California Line and 26 inch California First Loop Line, for deliveries of gas to Southwest Gas Corporation (Southwest) and Arizona Public Service Company (APS), and at the Yuma Power Plant also, respectively, both in the Yuma, Arizona area.

El Paso states that effective September 1, 1991 and October 1, 1991, Southwest and APS, respectively, elected to convert their firm sales entitlements under their existing Service Agreements to firm transportation service pursuant to the provisions of El Paso's Global Settlement in Docket No. RP88-44-000, et al. It is stated that the firm transportation service is rendered pursuant to the terms and conditions of

two Transportation Service Agreements, both dated August 9, 1991, between El Paso and Southwest, and one Transportation Service Agreement dated October 24, 1990, between El Paso and APS, which provide for the firm transportation of Southwest's full requirements of natural gas to consumers situated within the States of Arizona and Nevada and APS' full requirements of natural gas for use in its power plants situated within the State of Arizona.

It is stated that the relocation and replacement of the segments of the Yuma Line as requested by the State of Arizona Highway Department did not result in any change in service by El Paso in 1976. El Paso further states that beginning with the 1990's there has been extensive business and industrial development, together with growth in the residential sector in the Yuma, Arizona area. It is averred that today, the pipeline segments that were relocated no longer are sufficient for El Paso to provide the necessary transportation service to Southwest and APS in the Yuma, Arizona area. El Paso states that, as a solution to this problem, El Paso would install, under § 157.208(a) of the Commission's Regulations, two new segments of 16 inch line in replacement of the two segments to be abandoned. It is stated that such construction would be accomplished subsequent to receipt of the abandonment authorization requested herein. Therefore, El Paso is proposing to abandon, by removal, the two segments of 6½ inch Yuma Line. El Paso also states that the abandonment and installation of the two new segments of 16 inch pipeline will be accomplished without service interruptions.

Comment date: February 4, 1994, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-31737 Filed 12-28-93; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP94-132-000, et al.]

Trunkline Gas Co., et al. Natural Gas Certificate Filings

December 17, 1993.

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company

[Docket No. CP94-132-000]

Take notice that on December 14, 1993, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP94-132-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon exchange services with Transcontinental Gas Pipe Line Corporation (Transco) and a transportation service provided for Southern Natural Gas Company (SONAT), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Trunkline states that it proposes to abandon the exchange services with Transco under its Rate Schedules X-7, E-14 and TE-6. Trunkline further states that it proposes to abandon the transportation service provided for SONAT under its Rate Schedules T-1.

Trunkline says that it notified Transco of its desire to terminate the exchange agreements by letter dated July 30, 1993. Transco accepted Trunkline's termination letter on September 2, 1993, it is stated, and requests authority to abandon these exchange agreements effective the date of Commission authorization.

Trunkline states that by letter dated November 15, 1993, SONAT notified Trunkline of its desire to terminate the transportation agreement effective September 1, 1994. Trunkline further states that it accepted SONAT's letter of termination and requests authority to abandon Rate Schedule T-1 effective September 1, 1994.

No facilities are proposed to be abandoned by this application.

Comment date: January 7, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Canyon Creek Compression Co.

[Docket No. CP94-138-000]

Take notice that on December 16, 1993, Canyon Creek Compression Company (Canyon Creek), 701 East 22nd Street, Lombard, Illinois, filed in Docket No. CP94-138-000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon firm transportation and compression service for Natural Gas Pipeline Company of America (Natural), Questar Pipeline Company (Questar), and Colorado Interstate Gas Company (CIG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Canyon Creek proposes to abandon, effective December 1, 1993, firm transportation and compression services for Natural, Questar, and CIG, performed under authorization granted in Docket No. CP80-547 and under Canyon Creek's Rate Schedule C. Canyon Creek also proposes that it and its three shippers make up imbalances attributable to the above transportation and compression services at the existing interconnections specified in their service agreements or under other transportation and compression agreements between the parties or at more convenient interconnections between their systems, or by offsetting imbalances among them or with imbalances under other transportation and compression agreements between them.

Canyon Creek has included letters dated November 8, 1993, November 29, 1993, and December 7, 1993, from Natural, Questar, and CIG, respectively, requesting that the current services be terminated. It is also indicated that the shippers wish to replace the agreements with firm transportation and compression services to be performed under Canyon Creek's Rate Schedule FCS and Part 284 of the Commission's Regulations.

Canyon Creek proposes retroactive authorization effective December 1, 1993, to allay Natural's, Questar's, and CIG's concerns that they would be liable to pay Canyon Creek additional demand charges after December 1, 1993. Canyon Creek does not propose to abandon any facilities.

Comment date: January 7, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal

Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-31736 Filed 12-28-93; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. RM87-17-000]

Natural Gas Data Collection System; New and Revised Record Formats and Edit Checks for the FERC Form Nos. 2 and 2-a

December 23, 1993

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of new and revised electronic filing record formats and edit checks for the FERC Form Nos. 2 and 2-A.

SUMMARY: On March 31, 1993, the Commission issued Order No. 552 (58 FR 17982, April 7, 1993) which established accounting requirements for:

Allowances for emission of sulfur dioxide under the Clean Air Act Amendments of 1990; and assets and liabilities created through the ratemaking actions of regulatory agencies. In implementing these new accounting requirements, the final rule also adopted several new and revised schedules for the Form Nos. 2 and 2-A for reporting the information on allowances and regulatory assets and liabilities. Since information on the Form Nos. 2 and 2-A is also collected electronically (Order 493, et al.), new and revised record formats and instructions were developed to include the new reporting requirements of Order No. 552.

DATES: The complete record format and instruction manuals and list of new and revised edit checks for the Form Nos. 2 and 2-A are available on December 23, 1993.

ADDRESSES: Requests for the complete record format and instruction manuals and list of new and revised edit checks should be directed to the: Public Reference and Files Maintenance Branch, Federal Energy Regulatory Commission, 941 North Capitol Street, NE., room 3104, Washington, DC 20426, (202) 208-1371.

FOR FURTHER INFORMATION CONTACT: For general information on the record formats and edit checks, contact: Robert Trimble at (202) 208-0906.

SUPPLEMENTARY INFORMATION: The revised versions of the record formats and instructions also correct some minor deficiencies that existed in the previous record format manuals. Most specifically, the records for reporting "Gas Account—Natural Gas" for the Form No. 2 (records F7/29, 30, 31) and the Form No. 2-A (Form No. 2 substitute pages provided in records F8/74, 75, 76) now require the 'Name of System' or 'System ID' to be entered on each of these records.

The new and revised edit checks not only provide for the checking of new information required under Order No. 552 but also significantly expand the scope of the validation of previously required data. Formerly, the edit checks were defined primarily as columnar, vertical, mathematical equations for certain items on each page or schedule. The majority of the new edit checks now provide for mathematically checking horizontally, across the page, and will further enhance the validation of the data submitted by the reporting companies. A complete set of updated record formats and list of all new and revised edit checks is available in WordPerfect 5.1 format. Appendix A shows a directory listing of the record

format and edit check files for each form (one form per diskette) that is available from the duplication contractor at the Commission.¹ A complete list of all edit checks and related error messages will also be published in the User's Manual for these two forms when revised Form No. 2 and 2-A software is issued early next year. Details of the new and revised electronic record formats and edit checks for the Form No. 2 are listed in Appendices B and D, respectively. Details of the new and revised electronic record formats and edit checks for the Form No. 2-A are listed in Appendices C and E, respectively.

Copies of the complete record formats and new and revised edit checks for each form are available through the Commission's duplication contractor, LaDorn System Corporation (LaDorn). The record formats and edit checks can be purchased on diskette in the following ways:

(1) By written request to the Commission, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, ATTN: Mr. William McDermott, Chief, Public Reference & Files Branch. Please enclose a check, payable to LaDorn System Corporation for \$7.00 per diskette ordered and \$3.40 to cover postage and handling. Allow 10-14 days for processing and delivery.

(2) Directly from LaDorn System Corporation at the cashier's window in the Commission's Public Reference Room for \$7.00 per diskette plus applicable sales tax, if any. The Public Reference Room is located on the third floor, 941 N. Capitol Street, NE., Washington, DC.

(3) By telephone request to LaDorn Energy Information Services at 1-800-676-FERC. Orders placed by phone will be assessed charges as follows:

- (a) A \$25.00 processing fee,
 - (b) \$7.00 per diskette ordered, and
 - (c) Cost of shipping and handling.
- (The requestor will have a choice of regular mail, 2-Day Express Mail or Federal Express).

Please contact the Commission's Public Reference & Files Maintenance Branch on (202) 208-1371 or LaDorn (1-800-676-FERC) for information and the cost of purchasing the paper version of the record formats and list of new and revised edit checks for each form.

LaDorn System Corporation employees cannot answer questions regarding the use of the record formats and edit checks. Any questions concerning the application of the

¹ The Appendices are not being published in the Federal Register, but are available from the Commission's Public Reference Branch.

information contained in these documents should be directed to the individual listed in the **FOR FURTHER INFORMATION CONTACT:** section of this notice.

This notice, including all of the appendices, is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem. Your communications software should be set at full duplex, no parity, eight data bits and one stop bit. To access CIPS at 300, 1200 or 2400 baud dial (202) 208-1397. For access at 9600 baud dial (202) 208-1781. FERC is using U.S. Robotics HST Dual Standard modems. If you have any problems, please call (202) 208-2474. The notice will be available on CIPS for 30 days from the date of issuance of the notice.

In addition to publishing the text of this notice in the **Federal Register**, excluding Appendices A through E, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during normal business hours in the Reference and Information Center (room 3308) at the Commission's headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,
Secretary.

[FR Doc. 93-31804 Filed 12-28-93; 8:45 am]
BILLING CODE 6717-01-P

[Docket No. CP94-140-000]

Arkla Energy Resources Co.; Application

December 22, 1993.

Take notice that on December 20, 1993, Arkla Energy Resources Company (AER), Post Office Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP94-140-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the replacement of certain existing metering facilities to provide transportation service to Arkansas Louisiana Gas Company (ALG) for redelivery to residential and industrial customers located in Kay County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AER specifically proposes to replace an existing 2-inch U-Shaped residential meter setting with a 3-inch U-Shape

commercial meter setting at an existing delivery tap on AER's transmission Line A-3 for additional deliveries to ALG's customers on existing rural extension No. 898 in Kay County, Oklahoma. AER states that the replacement meter would increase AER's metered capability from 200 Mcf per day to 450 Mcf per day. AER states that the existing meter needs to be replaced immediately, because, if required to measure the additional peak day volumes during the upcoming winter, the existing meter could break up under pressure. AER estimates a facility cost of \$4,248, which it indicates would be reimbursed by ALG.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate for the proposal is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for AER to appear or be represented at the hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 93-31720 Filed 12-28-93; 8:45 am]
BILLING CODE 6717-01-P

[Docket No. PR94-3-000]

KansOk Partnership; Petition for Rate Approval

December 22, 1993.

Take notice that on November 30, 1993, KansOk Partnership (KansOk) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable the following rates for firm and interruptible transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA):

Firm Reservation Charge
\$4.5544 per MMBtu
Firm Usage Charge
\$0.0567 per MMBtu
Interruptible Usage Charge
\$0.2064 per MMBtu

KansOk states that these rates are derived using the Straight Fixed Variable methodology. Further, for transportation on its East Leg, KansOk proposes to also reserve as compressor fuel 2.38% of the gas received for transportation.

KansOk states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates an intrastate pipeline system in the State of Oklahoma. Pipeline proposes an effective date of November 20, 1993.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

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 on or before January 10, 1994. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 93-31731 Filed 12-28-93; 8:45 am]
BILLING CODE 6717-01-P

[Docket No. RP92-74-012]

South Georgia Natural Gas Co.; Compliance Filing

December 22, 1993.

Take notice that on October 29, 1993, South Georgia Natural Gas Company (South Georgia) in purported compliance with the requirements set forth in the Commission's October 19, 1993 order, submitted for filing a revised allocation schedule indicating the demand components of its Account No. 191 costs with respect to Atlanta Gas Light Company's (Atlanta) Valdosta and Montezuma, Georgia, service areas.

South Georgia states that it has allocated the demand components of its Account No. 191 costs to Valdosta and Montezuma individually and has therefore calculated both the demand and commodity components on a consistent basis. South Georgia notes that the total costs allocated to Atlanta did not change as a result of this revision.

South Georgia states that it has served the filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before January 3, 1994. All such protests will be considered by the Commission in determining the appropriate proceeding, but will not serve to make protestant a party to the proceedings. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 93-31734 Filed 12-28-93; 8:45 am]
BILLING CODE 6717-01-P

[Docket Nos. RP91-203-000 and RP92-132-000]

Tennessee Gas Pipeline Co.; Informal Settlement Conference

December 22, 1993.

Take notice that an informal settlement conference will be convened in these proceedings on January 11, 1994, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined

by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald Williams (202) 208-0743 or Dennis H. Melvin (202) 208-0042.

Lois D. Cashell,
Secretary.

[FR Doc. 93-31806 Filed 12-28-93; 8:45 am]

BILLING CODE 6717-01-P-M

[Docket No. TM94-7-29-000]

**Transcontinental Gas Pipe Line Corp.;
Proposed Changes in FERC Gas Tariff**

December 22, 1993.

Take notice that on December 16, 1993 Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets included in Appendix A attached to the filing.

TGPL states that the purpose of the instant filing is to track rate changes attributable to (1) storage service purchased from CNG Transmission Corporation (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under TGPL's Rate Schedules LSS and GSS, (2) storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X-28 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule S-2 and (3) transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under TGPL's Rate Schedule FT-NT. The tracking filing is being made pursuant to Section 4 of TGPL's Rate Schedule LSS, Section 3 of TGPL's Rate Schedule GSS, Section 26 of the General Terms and Conditions of Volume No. 1 of TGPL's FERC Gas Tariff and Section 4 of TGPL's Rate Schedule FT-NT.

TGPL states that included in Appendices B through E attached to the filing are the explanations of the rate changes and details regarding the computation of the revised LSS, GSS, S-2 and FT-NT rates, respectively.

TGPL states that copies of the filing are being mailed to each of its LSS, GSS, S-2 and FT-NT customers and interested State Commissions.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 3, 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. 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 in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 93-31735 Filed 12-28-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-229-019]

**Trunkline Gas Co.; Proposed Changes
in FERC Gas Tariff**

December 22, 1993.

Take notice that on December 17, 1993, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, revised tariff sheets as reflected in Appendix A attached to the filing.

Trunkline proposes that these sheets become effective September 1, 1992 and subsequent dates as shown on the tariff sheets.

Trunkline states that these revised tariff sheets are being filed to amend Rate Schedule T-61 for the transportation of natural gas provided jointly by Trunkline and Panhandle Eastern Pipe Line Company (Panhandle) on behalf of United Cities Gas Company (United Cities) to reflect Panhandle's current transportation rates as approved in Panhandle's Docket Nos. RP91-229-012, RP92-166-009, RP91-229-018, et al. by the Commission's Orders dated October 30, 1992, April 29, 1993 and April 16, 1993, respectively.

Trunkline states that a copy of this filing is being served on Panhandle, United Cities and the applicable state regulatory agency.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before January 3, 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 in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 93-31732 Filed 12-28-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-84-000]

**Viking Gas Transmission Co.;
Proposed Changes in FERC Gas Tariff**

December 22, 1993.

Take notice that on December 17, 1993, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective February 1, 1994:

First Revised Sheet No. 94
First Revised Sheet No. 95
First Revised Sheet No. 96
First Revised Sheet No. 139
First Revised Sheet No. 140

Viking states that the purpose of this filing is to amend the pro forma Gas Transportation Agreement (For Use Under Rate Schedule FT-A or FT-GS) and the Form of Released Transportation Service Agreement in Viking's tariff to include certain representations and warranties required by an indenture agreement as part of Viking's recent refinancing.

Viking states that copies of the filing is being mailed to each of Viking's customers and to interested state commissions.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 3, 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. 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 in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 93-31733 Filed 12-28-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Efficiency and Renewable Energy
Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy (DOE or Department) is forecasting the representative average unit cost of five residential energy sources for the year 1994. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene. The representative unit cost of these energy sources are used in the Energy Conservation Program for Consumer Products established by the Energy Policy and Conservation Act, Public Law 94-163, 89 Stat. 871, as amended, (EPCA).

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective January 28, 1994 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

Dr. Barry P. Berlin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE-43, 1000 Independence Avenue, SW, Washington, DC 20585 (202) 586-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-

41, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-9507

SUPPLEMENTARY INFORMATION: Section 323 of the EPCA, (Act)¹ requires that DOE prescribe test procedures for the determination of the estimated annual operating costs and other measures of energy consumption for certain consumer products specified in the Act. These test procedures are found in 10 CFR part 430, subpart B.

Section 323(b) of the Act requires that the estimated annual operating costs of a covered product be computed from measurements of energy use in a representative average-use cycle and from representative average unit costs of energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these costs are used under the Federal Trade Commission appliance labeling program established by section 324 of the Act and in connection with advertisements of appliance energy use and energy costs which are covered by section 323(c) of the Act.

The Department last published representative average unit costs of residential energy for use in the Conservation Program for Consumer Products on January 5, 1993. (58 FR 345). Effective January 28, 1994, the cost figures published on January 5, 1993, will be superseded by the cost figures set forth in this notice.

The Department's Energy Information Administration (EIA) has developed the 1994 representative average unit costs of electricity, natural gas, no. 2 heating oil, propane and kerosene prices found in this notice. These costs were taken from the EIA report, State Energy Projections for the Residential Sector, 1993-1994, SR/EMEU/93-01, which provides national and state-level forecasts of key residential energy prices. The report is prepared for the Administration for Children and Families, U.S. Department of Health and Human Services, which provides State grants to assist eligible households in meeting the costs of home energy use for space heating or cooling under the Low Income Home Energy Assistance Program.

The national average price forecasts found in the above EIA report are based on the mid-price case scenario of the Short-Term Integrated Forecasting System, as published in the third quarter 1993 EIA Short-Term Energy Outlook, DOE/EIA-0202 (93/3Q). Copies of this report are available at the National Energy Information Center, Forrestal Building, room 1F-048, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8800.

The 1994 representative average unit costs stated in Table 1 are provided pursuant to section 323(b)(4) of the Act and will become effective January 28, 1994 of publication. They will remain in effect until further notice.

Issued in Washington, DC, December 17, 1993.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

TABLE 1—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES—(1994)

Type of energy	In common terms	As required by test procedure	Dollars per million Btu ¹
Electricity	8.41¢/kWh ^{2,3}	\$.0841¢/kWh	\$24.65
Natural gas	60.4¢/therm ⁴ or .....	.00000604/Btu	6.04
	\$6.22/MCF ^{5,6}		
No. 2 Heating Oil	1.054/gallon ⁷ .....	.00000760/Btu	7.60
Propane	0.983/gallon ⁸ .....	.00001076/Btu	10.76
Kerosene	1.133/gallon ⁹ .....	.00000839/Btu	8.39

¹ Btu stands for British thermal units.

² kWh stands for kilowatt hour.

³ 1 kWh = 3,412 Btu.

⁴ 1 therm = 100,000 Btu. Natural gas prices include taxes.

⁵ MCF stands for 1,000 cubic feet.

⁶ For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,030 Btu.

⁷ For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.

⁸ For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.

⁹ For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

¹ References to the "Act" refer to 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. 42 U.S.C. §§ 6291-6309.

Office of Fossil Energy**[FE Docket No. 93-142-NG]****Canstates Petroleum Marketing; Order Granting Blanket Authorization to Import Natural Gas From 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 CanStates Petroleum Marketing blanket authorization to import up to 180 Bcf of natural gas from Canada over a period of two years beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 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 on December 20, 1993.

Clifford Tomaszewski,*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93-31685 Filed 12-28-93; 8:45 am]

BILLING CODE 6450-01-P**[FE Docket No. 93-129-NG]****JMC Fuel Services, Inc.; 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 (DOE) gives notice that it has issued an order granting JMC Fuel Services, Inc. (JMC Fuel) blanket authorization to import from and export to Canada up to a combined total of 62 Bcf of natural gas over a two-year term beginning on the date of first delivery of either imports or exports. The combined import/export authorization replaces two prior separate orders authorizing JMC Fuel to import gas from and export gas to Canada.

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 on December 20, 1993.

Clifford P. Tomaszewski,*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93-31689 Filed 12-28-93; 8:45 am]

BILLING CODE 6450-01-P**[FE Docket No. 93-120-NG]****Pawtucket Power Associates Limited Partnership; Long-Term Authorization to Import Natural Gas From 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 long-term authorization to Pawtucket Power Associates Limited Partnership (Pawtucket) to import from Canada up to 8,230 Mcf of natural gas per day and a total of 57,618,230 Mcf, over a period of 20 years. The gas will be supplied by Home Oil Company Limited. This order also amended a previous order issued to Pawtucket to remove the import authorization for volumes supplied under a recently terminated gas purchase contract between Pawtucket and Anderson Oil and Gas.

The 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 15, 1993.

Clifford P. Tomaszewski,*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93-31691 Filed 12-28-93; 8:45 am]

BILLING CODE 6450-01-P**[FE Docket No. 93-139-NG]****Poco Petroleum, Inc.; Order Granting Blanket Authorization to Import Natural Gas From 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 Poco Petroleum, Inc. (Poco) blanket authorization to import up to 200 Bcf of natural gas from Canada over a period of two years beginning on the date of the first delivery after January 20, 1994, the

date Poco's existing blanket import authorization expires.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 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 on December 20, 1993.

Clifford Tomaszewski,*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93-31686 Filed 12-28-93; 8:45 am]

BILLING CODE 6450-01-P**[FE Docket No. 93-134-NG]****Salmon Resources Ltd.; Order Granting Blanket Authorization to Import Natural Gas From Canada****AGENCY:** Office of Fossil Energy, DOE.**ACTION:** Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Salmon Resources Ltd. authorization to import up to 100 billion cubic feet of natural gas from Canada over a two-year term beginning on the date of first delivery after February 15, 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 15, 1993.

Clifford P. Tomaszewski,*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93-31687 Filed 12-28-93; 8:45 am]

BILLING CODE 6450-01-P**[FE Docket No. 93-133-NG]****Salmon Resources Ltd.; Order Granting Blanket Authorization to Export Natural Gas to Canada****AGENCY:** Office of Fossil Energy, DOE.**ACTION:** Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Salmon Resources Ltd. blanket authorization to export up to 100 billion

cubic feet of natural gas to Canada over a two-year term beginning on the date of the first delivery.

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 15, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-31688 Filed 12-28-93; 8:45 am]

BILLING CODE 6450-01-P

[FE Docket No. 93-124-NG]

UMC Petroleum Corp.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting UMC Petroleum Corporation blanket authorization to import up to 44 billion cubic feet (Bcf) of natural gas from Canada and to export up to 44 Bcf of natural gas to Canada over a two-year term beginning on the date of the 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 14, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-31690 Filed 12-28-93; 8:45 am]

BILLING CODE 6450-01-P

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Proposed Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of \$610,000.00, plus accrued interest, in alleged crude oil overcharges obtained by the DOE under the terms of the Consent Order entered into with J.R. Cone, Case No. LEF-0118. The OHA has tentatively determined that the funds obtained from Cone, plus interest accrued, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges.

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days of publication of this notice in the *Federal Register*, and should be addressed to the Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should be marked with the reference number LEF-0118.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants \$610,000.00, plus accrued interest, obtained by the DOE under the terms of the Consent Order entered into with J.R. Cone on May 14, 1993. The funds were paid by Cone towards the settlement of alleged violations of the DOE price and allocation regulations involving the sale of crude oil during the period September 1, 1973, through December 31, 1976.

The OHA has proposed to distribute the Cone Consent Order fund in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986)(the MSRP). Under the MSRP, crude oil overcharge monies are divided between the federal government, the states, and injured persons of refined petroleum products. Refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the degree to which they can demonstrate injury.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the *Federal Register* and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 3 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 100 Independence Avenue, SW., Washington, DC 20585.

Dated: December 20, 1993.

George B. Brezmay,

Director, Office of Hearings and Appeals.

Name of Firm: J.R. Cone

Date of Filing: November 16, 1993

Case Number: LEF-0118

On November 16, 1993, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute funds which J.R. Cone (Cone) remitted to the DOE pursuant to a Consent Order entered into by Cone and the DOE on May 14, 1993. Pursuant to the Consent Order, Cone has remitted \$610,000.00 to the DOE. In accordance with the procedural regulations codified at 10 CFR part 205, subpart V (subpart V), the ERA requests in its petition that the OHA establish special procedures to make refunds in order to remedy the effects of alleged regulatory violations which were resolved by the Consent Order. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

On September 28, 1978, the ERA issued a Notice of Probable Violation (NOPV) to Cone regarding two oil-producing properties, the Eubanks Lease Property and the Cone Jalmat-Yates Pool Unit (Cone Unit). After considering Cone's response to the NOPV, the ERA issued a Proposed Remedial Order (PRO) on May 31, 1979. The PRO tentatively found that Cone had sold crude oil produced from these properties in excess of the lawful ceiling prices. On March 25, 1983, the OHA issued a Remedial Order (RO) adopting the ERA's findings in the PRO. On October 31, 1985, the Federal Energy Regulatory Commission (FERC) affirmed the OHA's determinations concerning the Cone Unit but reversed the RO concerning the Eubanks Lease property

and remanded the RO to the OHA. On March 24, 1986, the OHA issued a Supplementary Order (SO) which reduced the alleged overcharges from the Eubanks Lease Property. Cone appealed the SO, which was vacated by the administrative law judge (ALJ) on May 12, 1986. The FERC vacated the certification on June 17, 1986, and remanded the case to the ALJ. On July 23, 1986, the FERC issued an Order Clarifying Prior Decision and Dismissing Appeal. In this Order, the FERC vacated its June 17, 1986, order and found that it had properly reversed OHA's findings of overcharges from the Eubanks Lease Property in its October 31, 1985, Order. On May 14, 1993, Cone and the DOE entered into a Consent Order, wherein Cone tendered a cashier's check for \$610,000.00 in settlement of all claims resulting from the March 25, 1983, RO. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501-07, *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vicker's*).

We have considered the ERA's petition that we implement a subpart V proceeding with respect to the Cone Consent Order fund and have determined that such a proceeding is appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute this fund.

III. Proposed Refund Procedures

A. Crude Oil Refund Policy

We propose to distribute the funds obtained with the Cone Consent Order in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (The MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement *In re: The Department of Energy Stripper Well Exemption Litigation*, 653 F.Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines

¶ 90,509 (1986) (the Stripper Well Settlement Agreement). The MSRP establishes that 40 percent of the crude oil funds will be remitted to the federal government, another 40 percent to the states, and up to 20 percent may be initially reserved for payment of claims by injured parties. The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

The OHA has utilized the MSRP in all subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). This Order provided a period of 30 days for filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a Notice evaluating the numerous comments which it had received pursuant to the Order Implementing the MSRP. This notice was published at 52 FR 11737 (April 10, 1987) (the April 10 Notice).

The April 10 Notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) show that they were injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose business were unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges. End-users, therefore, need only submit documentation of their purchase volumes. See *City of Columbus, Georgia*, 16 DOE ¶ 85,550 (1987). Additionally, we stated that we would calculate crude oil refunds on a per gallon (or volumetric) basis, which we obtained by dividing the crude oil refund pool by the total consumption of petroleum products in the United States during the crude oil price control period. The OHA has adopted the refund procedures outlined in the April 10 Notice in numerous cases. See, e.g. *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) (*Shell*); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*).

B. Refund Claims

We propose to adopt the DOE's standard crude oil refund procedures to distribute the monies in the Cone Consent Order fund. We have chosen to initially reserve 20 percent of the fund,

plus accrued interest, for direct refunds to claimants in order to ensure that sufficient funds will be available for injured parties.

The OHA will evaluate crude oil refund claims in a manner similar to that used in subpart V proceedings to evaluate claims based on alleged overcharges. See *Mountain Fuel* 14 DOE at 88,869. Under these procedures, claimants will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the alleged overcharges.

We will adopt a presumption that the crude oil overcharges were absorbed, rather than passed on, by applicants which were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751-760h. Under this presumption, end-user claimants need not submit documentation to show injury, and may become eligible for a refund by simply documenting their purchase volumes. See *Shell*, 17 DOE at 88,406.

Petroleum retailer, refiner, and reseller applicants must submit detailed documentation of injury. They may not rely upon the injury presumptions utilized in some refined products refund cases. *Id.* These applicants may, however, use econometric evidence of the type found in the *OHA Report on Stripper Well Overcharges*, 6 Fed. Energy Guidelines ¶ 90,507 (1985). See also Petroleum Overcharge Distribution and Restitution Act section 3003(b)(2) codified at 15 U.S.C. 4502(b)(2). If a claimant has executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Agreement, it has waived its rights to file an application for subpart V crude oil refund monies. See *Mid-America Dairymen v. Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App.), 3 Fed. Energy Guidelines ¶ 26,617 (1989); *In re: Department of Energy Stripper Well Exemption Litigation*, 707 F. Supp. 1267 (D. Kan.), 3 Fed. Energy Guidelines ¶ 26,613 (1987).

As we have stated in prior Decisions, a crude oil refund applicant need only submit one application for its share of all available crude oil overcharge funds. See e.g. *A. Tarricone, Inc.*, 15 DOE ¶ 85,495 (1987). A party that has already submitted a claim in any other crude oil refund need not file another claim. The prior application will be deemed to be held in all crude oil refund proceedings finalized to date. The DOE has established June 30, 1994, as the final deadline for filing an Application for

Refund from the crude oil funds. See 58 FR 26,318 (May 3, 1993). It is the policy of the DOE to pay all crude oil refund claims at the rate of \$.0008 per gallon. While we anticipate that the applicants that filed their claims before June 30, 1988 will receive a supplemental refund payment, we will decide in the future whether claimants that filed later applications should receive additional refunds. See e.g. *Seneca Oil Co.*, 21 DOE ¶ 85,327 (1991). Notice of any additional amounts available in the future will be published in the *Federal Register*.

C. Payments to the Federal Government and the States

Under the terms of the MSRP, we propose that the remaining eighty percent of the alleged crude oil overcharge amounts subject to this Proposed Decision, plus accrued interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement 6 Fed. Energy Guidelines ¶ 90,509 at 90,687. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

It Is Therefore Ordered That: The refund amount remitted to the Department of Energy by J.R. Cone pursuant to the Consent Order entered into on May 14, 1993, will be distributed in accordance with the foregoing Decision.

[FR Doc. 93-31684 Filed 12-28-93; 8:45 am]
BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4819-1]

Control Techniques Guidelines Document: Batch Process

AGENCY: Environmental Protection Agency (EPA).

ACTION: Release of draft control techniques guidelines (CTG) document for public review.

SUMMARY: A draft CTG document for control of volatile organic compound (VOC) emissions from batch processes is available for public review and comment. This information document

has been prepared to assist States in analyzing and determining reasonably available control technology (RACT) for stationary sources of VOC emissions located within ozone national ambient air quality standard nonattainment areas. The draft document recommends RACT for seven industries: Plastic Materials and Resins (Standard Industrial Classification [SIC] 2821), Pharmaceutical Preparations (SIC 2834), Medicinal Chemicals and Botanical Products (SIC 2833), Gum and Wood Chemicals (SIC 2861), Cyclic Crudes and Intermediates (SIC 2865), Industrial Organic Chemicals (SIC 2869), and Agricultural Chemicals (SIC 2879). The control techniques described in this CTG are universal and can be used to reduce VOC emissions from batch processing operations in other industries.

DATES: *Comments.* Several aspects of the document regarding applicability calculations and implementation are complex. Comments on these aspects are especially desired. Comments must be received on or before February 28, 1994.

ADDRESSES: Comments should be submitted (in duplicate if possible) to: Randy McDonald, (919) 541-5402, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711.

Copies of the draft CTG may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, N.C. 27711, telephone number (919) 541-2777.

Project File. To make an appointment to view the project file, contact Ms. Marguerite Thweatt, (919) 541-5607, Emission Standards Division (MD-13), U. S. Environmental Protection Agency, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, (919) 541-5402, Emissions Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION: Under the Clean Air Act as amended (1990 Amendments), State implementation plans (SIP's) for ozone nonattainment areas must be revised to require RACT for control of VOC emissions from sources for which EPA has already published a CTG or for which it will publish a CTG between the date the 1990 Amendments were enacted and the date an area achieves attainment status. *Federal Register* notice 44 FR 53761 (September 17, 1979) defines RACT as the "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably

available considering the technological and economic feasibility."

The CTG's review current knowledge and data concerning the technology and costs of various emissions control techniques. The CTG's are intended to provide State and local air pollution authorities with an information base for proceeding with their own analyses of RACT to meet statutory requirements.

Each CTG contains a "presumptive norm" for RACT for a specific source category, based on the EPA's evaluation of the capabilities and problems general to that category. Where applicable, EPA recommends that States adopt requirements consistent with the presumptive norm. However, the presumptive norm is only a recommendation. States may choose to develop their own RACT requirements on a case-by-case basis, considering the emission reductions needed to obtain achievement of the national ambient air quality standards and economic and technical circumstances of the individual source.

This CTG recommends a RACT presumptive norm for the control of VOC emissions from batch processes. Each of the industries addressed in this CTG use batch processing steps in manufacturing their products. Many of these steps involve use of organic solvents or other volatile organic liquids, and are a source of VOC emissions. The sources, mechanisms, and control of these VOC emissions are described in the CTG.

Under Executive Order (E.O.) 12291, the EPA must judge whether a rule is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This CTG document is not "rulemaking;" rather it provides information to States to aid them in developing rules. However, this *Federal Register* notice and the draft CTG were submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any EPA responses to those comments will be included in the project file. This file is available for public inspection at the EPA's office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, which is listed in the **ADDRESSES** section of this notice.

Dated: December 15, 1993.

Ann E. Goode,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93-31682 Filed 12-28-93; 8:45 am]
BILLING CODE 6560-50-P

[AO-FRL-4818-9]

**Control Techniques Guideline
Document: Industrial Wastewater**AGENCY: Environmental Protection
Agency (EPA).ACTION: Release of a draft control
techniques guideline (CTG) document
for public review.

SUMMARY: The EPA is announcing the availability of a draft CTG document for control of volatile organic compound (VOC) emissions from the collection and treatment of industrial wastewater. This CTG document has been prepared to assist States in analyzing and determining reasonably available control technology (RACT) for stationary sources of VOC emissions located within ozone national ambient air quality standard nonattainment areas. The draft document recommends RACT for VOC wastewater emissions from four industries: The organic chemicals, plastics, and synthetic fibers (OCPSF) industry; the pesticides industry; the pharmaceuticals industry; and the hazardous waste treatment, storage, and disposal facilities (TSDF) industry. The draft CTG contains information on two other industries: pulp and paper industry and petroleum refinery industry, but does not recommend RACT for them due to other regulatory actions that will address them.

The control strategy and national impact analysis in this document is intended to reflect the approach taken in the wastewater portion of the proposed Hazardous Organic NESHAP (HON) even though the HON is addressing hazardous air pollutant (HAP) emissions and the CTG is addressing VOC emissions in nonattainment areas. The HON will set maximum achievable control technology (MACT) standards for HAP emissions from wastewater generated in the synthetic organic chemical manufacturing industry (SOCMI), which is a subset of the OCPSF industry. Because the technical basis and requirements of the wastewater portion of the HON have been subject to ongoing discussions and revisions, and may be modified further based on public comments, there may be some inconsistencies between this document and the HON; however, any revisions to the HON wastewater standards will be incorporated into the final CTG before it is published. The Agency's intent is that the timing and requirements of the final CTG, the HON and other MACT wastewater standards be complementary.

DATES: *Comments.* Comments must be received on or before February 28, 1994.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Ms. Elaine Manning, ATTN: Industrial Wastewater Comments, U.S. Environmental Protection Agency, Emission Standards Division (MD-13), Research Triangle Park, North Carolina 27711.

Control Techniques Guideline. Copies of the draft CTG, document EPA-453/D-93-056, may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777.

Project File. To make an appointment to view the project file, contact Ms. Jolynn Collins, (919) 541-5671, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Manning, (919) 541-5499, Emission Standards Division (MD-13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: Under the Clean Air Act (CAA) Amendments of 1990, State implementation plans (SIP's) for ozone nonattainment areas must be revised to require RACT for control of VOC emissions from sources for which EPA has already published a CTG or for which it will publish a CTG between the date the Amendments were enacted and the date an area achieves attainment status. **Federal Register** notice 44 FR 53761 (September 17, 1979) defines 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 the technological and economic feasibility."

The CTG's review current knowledge and data concerning the technology and costs of various emissions control techniques. The CTG's are intended to provide State and local air pollution authorities with an information base for proceeding with their own analyses of RACT to meet statutory requirements.

Each CTG contains a "presumptive norm" for RACT for a specific source category, based on the EPA's evaluation of the capabilities and problems general to that category. Where applicable, EPA recommends that States adopt requirements consistent with the presumptive norm. However, the presumptive norm is only a recommendation. States may choose to develop their own RACT requirements on a case-by-case basis, considering the emission reductions needed to obtain

achievement of the national ambient air quality standards and economic and technical circumstances of the individual source.

This CTG recommends a RACT presumptive norm for the control of VOC emissions from the collection and treatment of industrial wastewater. Each of the industries addressed in this CTG generates large quantities of wastewater containing organic compounds. Generally, this wastewater is collected and treated to reduce the organic compound loading in the discharged water stream. However, during collection and treatment, the wastewater containing organic compounds generally contacts ambient air, creating a source of VOC emissions. The sources, mechanisms, and control of these VOC emissions are described in the CTG.

The Agency requests public comments on this draft CTG document. Comments are specifically requested on the cost effectiveness considerations in the development of the recommended RACT option. As shown in Table 6-1 of the draft CTG document, the national cost effectiveness of the recommended RACT option for all the industries is 480 dollars per megagram and the incremental cost effectiveness beyond the next less stringent option is 1400 dollars per megagram of VOC's controlled. Comments are requested on specific situations where the cost effectiveness of the recommended RACT option would differ significantly from these estimates and ways the CTG could achieve emissions reductions at lower costs.

Under Executive Order (E.O.) 12291, the EPA must judge whether a rule is "major" and therefore subject to the requirement of a regulatory impact analysis. This CTG document is not "rulemaking," rather it provides information to States to aid them in developing rules. This **Federal Register** notice and the draft CTG were submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291. Any comments from OMB to EPA and any EPA responses to those comments will be included in the project file. This file is available for public inspection at the EPA's Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, which is listed in the **ADDRESSES** section of this notice.

Dated: December 15, 1993.

Ann E. Goode,
*Acting Assistant Administrator, Office of Air
and Radiation.*

[FR Doc. 93-31683 Filed 12-28-93; 8:45 am]

BILLING CODE 6560-50-P

[FRL-4819-3]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Petition for Exemption-Class I Hazardous Waste Injection; Morton International, Inc.**AGENCY:** Environmental Protection Agency.**ACTION:** Notice of final decision on petition modification.

SUMMARY: Notice is hereby given that a modification to an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Morton International, Inc. This modification authorizes use of a new injection well at the Moss Point, Mississippi facility. As required at 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows Morton International, Inc. to inject the specific restricted hazardous waste identified in the petition into the Class I hazardous waste well authorized by the modified petition until September 30, 2000. As required at 40 CFR 124.10, a public notice was issued on August 19, 1993. A single response was received before the close of the comment period on October 3, 1993. The concerns addressed in that response did not pertain to the proposed modification, hence a public hearing was not held. This decision constitutes final Agency action and there is no Administrative appeal.

DATED: This action is effective as of November 19, 1993.**ADDRESSES:** Copies of the modified petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region IV, Water Management Division, Ground Water Protection Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.**FOR FURTHER INFORMATION CONTACT:** Thomas J. Hansen, Chief, Underground Injection Control Section, EPA Region IV, telephone (404) 347-3379.

Dated: December 13, 1993.

Patrick M. Tobin.

Acting Regional Administrator, Region IV.

[FR Doc. 93-31861 Filed 12-28-93; 8:45 am]

BILLING CODE 6560-50-P

[OPP-180909; FRL 4749-3]

Receipt of Application for Emergency Exemption to use Fenoxycarb; Solicitation of Public Comment**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: EPA has received a specific exemption request from the Washington Department of Agriculture (hereafter referred to as the "Applicant") for use of the pesticide fenoxycarb (CAS 72490-01-8) to control pear psylla *Cacopsylla pyricola* on up to 25,000 acres of pears. The Applicant proposes the first food use of an active ingredient; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before January 13, 1994.**ADDRESSES:** Three copies of written comments, bearing the identification notation "OPP-180909," should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #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." 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 Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308-8791.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of the insecticide, fenoxycarb, manufactured as Fenoxycarb 25 WP, by Ciba-Geigy Corporation, to control pear psylla, on up to 25,000 acres of pears. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that pear psylla is a major, chronic pest of all Washington pear orchards. If the pest is left uncontrolled, it will cause dramatic yield decreases, and eventual tree debilitation. The pear psylla causes injury by the copious amounts of honeydew which are secreted by the feeding nymphs. Honeydew on the fruit causes deformed fruit and russetting, major quality problems which cause downgrading of fruit and increased cullage. In addition, the honeydew causes secondary problems with black sooty mold on the fruit. The pear psylla also causes damage by injecting a toxin into the tree during the feeding process, which, in the long run, is debilitating and reduces vigor and, ultimately, yield. Pear psylla overwinter as adults in the trees. Dormant spraying is necessary to reduce the overwintering adult population before they lay eggs. The only effective winter spray materials for some years were the synthetic pyrethroids, permethrin and fenvalerate. When widespread resistance to these materials became evident in the psylla population by 1987-88, the Applicant states that cyfluthrin was used under section 18 exemptions in 1988-92, and was found to be efficacious.

In 1993 (last season), the Applicant first requested this use of fenoxycarb, claiming that failure of cyfluthrin had been demonstrated, indicating the development of pear psylla populations which are resistant to this previously effective material. However, the toxicology data available at that time for fenoxycarb did not support use of this material, and the request was withdrawn by the Applicant. The Applicant again used cyfluthrin last season under section 18, for this pest, but claims that much of the pear psylla populations in north central Washington are now resistant to cyfluthrin. The Applicant is therefore requesting the use of fenoxycarb, and claims that field trials have

demonstrated that this material provides excellent control of pear psylla in pears.

The Applicant wishes to treat up to 25,000 acres of pear trees using up to 6,250 pounds of active ingredient. Up to two applications would be made per growing season, at a maximum rate of 2 oz. active ingredient (8 oz. product) per acre, diluted in water to make a minimum spray volume of 50-400 gallons per acre. Application of fenoxycarb would not be allowed by air or through chemigation equipment.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the *Federal Register* and solicit public comment on an application for a specific exemption proposing the first food use of an active ingredient. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Washington Department of Agriculture.

List of Subjects

Environmental protection, Pesticide and pests, Crisis exemptions.

Dated: December 9, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-31471 Filed 12-28-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180910; FRL 4750-1]

Receipt of Applications for Emergency Exemptions To Use Propazine; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the New Mexico and the Texas Departments of Agriculture (hereafter referred to as the "Applicants") to use the pesticide propazine (CAS 139-40-2) to treat up to 50,000 and 1,823,000 acres of sorghum, respectively, to control pigweed. The Applicants propose the use of a new (unregistered) chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before January 13, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180910," should be submitted by mail to: Public Docket and Freedom of Information Section, 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, Crystal Mall #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." 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 Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308-8791.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicants have requested the Administrator to issue specific exemptions for the use of propazine on sorghum to control pigweed. Information in accordance with 40 CFR part 166 was submitted as part of this request.

Sorghum is grown as a rotational crop with cotton and wheat, in order to comply with the soil conservation requirements. Propazine, which was formerly registered for use on sorghum, was voluntarily canceled by the former Registrant, who did not wish to support its re-registration. The Applicants claim that this has left sorghum growers in

most of Texas and New Mexico with no pre-emergent herbicides that will adequately control certain broadleaf weeds, especially pigweed. Until recently, growers have been using up existing stocks of propazine. The Applicants state that other available herbicides have serious limitations on their use, making them unsuitable for control of pigweed in sorghum. Although the original Registrant of propazine has decided not to support this chemical through re-registration, another company has committed to support the data requirements for this use. Propazine was once registered for this use, but has now been voluntarily canceled and is therefore considered to be a new chemical.

The Applicants state that, because growers have been using existing stocks of propazine since the time of its voluntary cancellation, yields have not shown a decrease. However, this is the first season where most growers have depleted their stocks of propazine, and the Applicants claim that significant economic losses will occur without the availability of propazine.

The Applicants propose to apply propazine at a maximum rate of 1.2 lbs of active ingredient (a.i.), (2.4 pts. of product) per acre, by ground or air, with a maximum of one application per crop growing season. Therefore, use under these exemptions could potentially amount to a maximum total of 60,000 lbs. of active ingredient (15,000 gal. of product) in New Mexico, and 2,187,600 lbs. of active ingredient (546,900 gal. of product) in Texas. This is the first time that New Mexico has applied for this use of propazine on sorghum, and the second time for Texas. Texas was issued an exemption for this use for last growing season. This notice does not constitute a decision by EPA on the applications themselves. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the New Mexico and Texas Departments of Agriculture.

List of Subjects

Environmental protection, Pesticide and pests, Crisis exemptions.

Dated: December 14, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-31475 Filed 12-28-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180914; FRL 4750-8]

Receipt of Application for Emergency Exemption To Use Pyriithobac-Sodium; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Mississippi Department of Agriculture and Commerce (hereafter referred to as the "Applicant") for use of the pesticide pyriithobac-sodium to control common cocklebur on up to 450,000 acres of cotton in Mississippi. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before January 13, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180914," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #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." 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 Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308-8327.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for use of the herbicide, pyriithobac-sodium, available as Staple Herbicide from DuPont Agricultural Products, to control common cocklebur on up to 450,000 acres of cotton in Mississippi. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, dense populations of common cocklebur have the potential to cause substantial yield and economic losses in cotton. The herbicides which have historically been used to control economically damaging infestations of cocklebur are the organic arsenicals, DSMA and MSMA. In 1992, arsenical-resistant cocklebur populations were documented in a number of Mississippi counties. Although there are several other registered herbicides which can be used for cocklebur control in cotton, including both pre-emergent (floumetron, clomazone, diuron and norflurazon) and post-emergent (lactofen) herbicides, the Applicant claims that none of these is as effective at controlling cocklebur as pyriithobac-sodium.

Under the proposed exemption, a single ground or aerial application of Staple Herbicide would be made at 1.2 ounces of product (1.0 ounce active ingredient (a.i.) per acre. No applications would be made within 45 days of harvest. A maximum of 33,750 pounds of product (28,688 pounds a.i.) would be needed to treat up to 450,000 acres of cotton.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the *Federal Register* and solicit public comment on an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) [40

CFR 166.24 (a)(1)]. Pyriithobac-sodium is a new chemical. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Mississippi Department of Agriculture and Commerce.

List of Subjects

Environmental protection, Pesticide and pests, Crisis exemptions.

Dated: December 14, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-31474 Filed 12-28-93; 8:45 am]

BILLING CODE 6560-50-F

[PP 1G3964/T652; FRL 4748-6]

Consep Membranes, Inc.; Extension of an Exemption From Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended the temporary exemption from the requirement of a tolerance for the combined residues of the pheromone codlure, (E,E)-8,10-Dodecadien-1-ol, in or on all raw agricultural commodities when applied to the branches of trees via a membrane type dispenser.

DATES: This temporary exemption from the requirement of a tolerance expires December 30, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Office location and telephone number: Rm. 213, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-305-7690).

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the *Federal Register* of March 10, 1993 (58 FR 13263) that a temporary exemption from the requirement of a tolerance had been extended for the combined residues of the pheromone codlure, (E,E)-8,10-Dodecadien-1-ol, in or on all raw agricultural commodities when applied to the branches of trees via membrane type dispenser. This exemption from the requirement of a tolerance was established in response to

a pesticide petition (PP) 1G3964, submitted by Consep Membranes, Inc., c/o Gary Clark, Manager of Regulatory Affairs, 213 SW., Columbia St., Bend, Oregon 97702-1013.

The company has requested a 1-year extension of the temporary tolerance to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 56336-EUP-2, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemption from the requirement of a tolerance will protect the public health. Therefore, the temporary exemption from the requirement of a tolerance has been extended on the condition that the pesticides be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredients to be used must not exceed the quantity authorized by the experimental use permit.

2. Consep Membranes, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption from the requirement of a tolerance expires December 30, 1994. Residues remaining in or on all the raw agricultural commodities after this expiration date will not be considered actionable if the pesticides are legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemption from the requirement of a tolerance. This temporary exemption from the requirement of a tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

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).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 10, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-31470; Filed 12-28-93; 8:45 am]

BILLING CODE 6560-60-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 632-6934.

Federal Communications Commission

OMB Control No.: 3060-0579

Title: Expanded Interconnection with Local Telephone Company Facilities for Interstate Switched Transport Services

Expiration Date: 11/30/96

Estimated Annual Burden: 1996 total hours; 124.75 hours per response.

Description: In the Second Report and Order and Third Further Notice of Proposed Rulemaking, in the Expanded Interconnection proceeding, CC Docket No. 91-141, the Commission required Tier 1 local exchange carriers (LECs) to provide expanded opportunities for third-party interconnection with their interstate switched transport facilities. The Commission concluded that the LECs should be required to provide certain cost support to justify the rate levels for the tariff charges to be paid by interconnectors for expanded interconnection. The Commission required the price cap LECs to

provide cost support for the connection charges using the same methodologies employed to support new services under the price cap rules. The Commission required the LECs to develop and justify consistent methodologies for deriving the direct cost of providing similar types of offerings, including expanded interconnection services covered by the connection charge elements. The Commission also required the LECs to justify any deviations from uniform overhead loadings that they propose for pricing connection charges.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93-31800 Filed 12-28-93; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; A.P. Moller—Maersk Line, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-011102-019.

Title: U.S. Atlantic & Gulf/Western Mediterranean Rate Agreement.

Parties:

A.P. Moller-Maersk Line.
Evergreen Marine Corporation (Taiwan) Ltd.
Italia di Navigazione, S.p.A.
Lykes Bros. Steamship Co., Inc.
Nedlloyd Lijnen B.V.
P&O Containers Limited.
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment will permit the Agreement members to take independent action on rate or service items that are exempted from the tariff filing requirements of section 8 of the Shipping Act on or after June 30, 1994.

Agreement No.: 232-011444.

Title: Frontier Liner Services/Kirk Line Agreement.

Parties:

Frontiner Liner Services.
Kirk Line Ltda.

Synopsis: The proposed Agreement authorizes the parties to charter space to each other and rationalize sailing in the trade between U.S. Florida ports and inland and coastal points served via Florida on the one hand and, on the other hand, ports of Aruba, Bonaire, Curacao and Atlantic Coast ports of Columbia and inland and coastal points in Colombia via Colombian Atlantic Coast ports.

Dated: December 22, 1993.

By order of the Federal Maritime Commission.

Ronald D. Murphy,
Assistant Secretary.

[FR Doc. 93-31713 Filed 12-28-93; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Bancorporation of Ohio, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 20, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101;

1. First Bancorporation of Ohio, Akron, Ohio; to acquire 100 percent of the voting shares of Peoples Savings Bank, FSB, Ashtabula, Ohio, which will in turn convert into a national bank to be named Peoples Bank, National Association.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Adamsville Bancshares, Inc., Adamsville, Tennessee; to acquire 100 percent of the voting shares of Lewis County Bank, Hohenwald, Tennessee.

2. Boatmen's Bancshares, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Woodland Bancorp, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Woodland Bank, Tulsa, Oklahoma.

3. Boatmen's Oklahoma, Inc., St. Louis, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Boatmen's First National Bank of Oklahoma, Oklahoma City, Oklahoma.

4. First Tennessee National Corporation, Memphis, Tennessee; to acquire at least 90 percent of the voting shares of Cleveland Bank and Trust Company, Cleveland, Tennessee.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bankshares, Inc., Fargo, North Dakota; to acquire 100 percent of the voting shares of Ada BancShares, Inc., Ada, Minnesota, and thereby indirectly acquire The Ada National Bank, Ada, Minnesota.

2. First Bank System, Inc., Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Boulevard Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire Boulevard Bank National Association, Chicago, Illinois; National Security Bank of Chicago, Chicago, Illinois; First National Bank of Des Plaines, Des Plaines, Illinois; and Citizens National Bank of Downers Grove, Downers Grove, Illinois. First Bank System, Inc., Minneapolis, Minnesota; has also applied to acquire 19.9 percent of the voting shares of Boulevard Bancorp, Inc., Chicago, Illinois.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Southeast Kansas Bancshares, Inc., Girard, Kansas; to become a bank holding company by acquiring 99 percent of the voting shares of Prescott State Bank Holding Company, Prescott, Kansas, and thereby indirectly acquire Prescott State Bank, Prescott, Kansas, and to acquire 86.59 percent of the

voting shares of Exchange State Bank, St. Paul, Minnesota. **Comments on this application must be received by January 13, 1994.**

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Marshall Corporation, Marshall, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of East Texas National Bank of Marshall, Marshall, Texas.

2. Southern Bancshares, Inc., Houston, Texas; to acquire 100 percent of the voting shares of First State Bank of Brazoria, Brazoria, Texas.

Board of Governors of the Federal Reserve System, December 21, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-31722 Filed 12-28-93; 8:45 am]
BILLING CODE 6210-01-F

First Chicago Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of

fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 17, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation*, Chicago, Illinois; to engage *de novo*, through its subsidiary, *First Chicago Leasing Corporation*, Chicago, Illinois, in arranging and investing in entities for the financing of low-income housing eligible for Federal income tax credits under section 42 of the Internal Revenue Code, and providing advice to customers in connection with the arranging of such entities pursuant to § 225.25(b)(6) of the Regulation Y.

Board of Governors of the Federal Reserve System, December 21, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-31723 Filed 12-28-93; 8:45 am]

BILLING CODE 6210-01-F

Mahaska Investment Company, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources,

decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 20, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mahaska Investment Company*, Oskaloosa, Iowa; to acquire On-Site Commercial Services, Oskaloosa, Iowa, and thereby engage in making and servicing loans/factoring through the purchase and management of the account receivables of small to medium size companies pursuant to § 225.25(b)(1)(v); and data processing services by providing bookkeeping services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Bank, Inc.*, Clayton, Missouri; to acquire Heartland Savings Bank, F.S.B., St. Louis, Missouri, and thereby engage in operating a savings and loan association § 225.25(b)(9); and in insurance activities pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota, and *Norwest Financial Services, Inc.*, Des Moines, Iowa; to acquire Community Credit Co., Edina, Minnesota, and thereby engage in the consumer finance business, predominately automobile financing pursuant to § 225.25(b)(1); and credit insurance activities pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 21, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-31724 Filed 12-28-93; 8:45 am]

BILLING CODE 6210-01-F

Marshall & Ilsley Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 20, 1994.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marshall & Ilsley Corporation*, Milwaukee, Wisconsin; to merge with

Valley Bancorporation, Appleton, Wisconsin, and thereby indirectly acquire Valley Bank, Madison, Wisconsin; Valley Bank, La Crosse, Wisconsin; Valley Bank, Menomonie, Wisconsin; Valley Bank East Central, Kewaskum, Wisconsin; Valley Bank Janesville, Janesville, Wisconsin; Valley Bank Milwaukee, Thiensville, Wisconsin; Valley Bank, N.A., Watertown, Wisconsin; Valley Bank, Northeast, Green Bay, Wisconsin; Valley Bank of Oshkosh, Oshkosh, Wisconsin; Valley Bank of Shawano, Shawano, Wisconsin; Valley Bank, Southwest, Spring Green, Wisconsin; Valley First National Bank, Rhinelander, Wisconsin; Valley First National Bank of Ripon, Ripon, Wisconsin; Valley Western Bank, Appleton, Wisconsin; and Pierce County Bank and Trust Company, Ellsworth, Wisconsin.

In connection with this application, Applicant also proposes to acquire Valley Bancorporation, Appleton, Wisconsin, and thereby indirectly acquire Valley Trust Company, Appleton, Wisconsin, and thereby engage in providing trust services pursuant to § 225.25(b)(3); Valley United Bank, S.S.B., Sheboygan, Wisconsin; and Valley Bank Western, F.S.B., Sparta, Wisconsin, and thereby operate a savings association pursuant to § 225.25(b)(9); Valley Real Estate Services Corporation, Sheboygan, Wisconsin, and thereby engage in providing residential 1-4 family mortgage loan servicing to Valley Bank subsidiaries pursuant to § 225.25(b)(1); Community Life Insurance Company, Phoenix, Arizona, and thereby engage in underwriting credit-related insurance in connection with loans originated by Valley Bank subsidiaries pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 21, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-31725 Filed 12-28-93; 8:45 am]

BILLING CODE 6210-01-F

**Rodney Barrett Scarborough, et al.;
Change in Bank Control Notices;
Acquisitions of Shares of Banks or
Bank Holding Companies**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 17, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Rodney Barrett Scarborough*, Timmonsville, South Carolina; to acquire an additional 14 percent, for a total of 29 percent, of the voting shares of Pee Dee Bankshares, Inc., Timmonsville, South Carolina, and thereby indirectly acquire Pee Dee State Bank, Timmonsville, South Carolina.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Craig L. Campbell* to acquire 0.77 percent, Douglas L. Campbell to acquire 2.07 percent, and Scott L. Campbell to acquire 1.92 percent, of the voting shares of Peotone Bancorp, Inc., Peotone, Illinois, and thereby indirectly acquire Peotone Bank and Trust Company, Peotone, Illinois; Rock River Bank, Rock River, Illinois; Worth Bank and Trust, Worth, Illinois; Mount Greenwood Bank, Chicago, Illinois; First National Bank of Danville, Danville, Illinois; Sun City Bank, Sun City, Arizona; and Founders Bank of Arizona, Scottsdale, Arizona.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *David J. Flo*, to acquire an additional 4.53 percent for a total of 25.06 percent; The Donald B. Flo Credit Trust to acquire an additional 5.78 percent for a total of 45.37 percent; Signe M. Flo, as trustee of the Donald B. Flo Credit Trust, to acquire an additional 5.78 percent for a total of 45.37 percent of the voting shares of South Central Financial Services, Inc., Bricelyn, Minnesota, and thereby indirectly acquire State Bank of Bricelyn, Bricelyn, Minnesota.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Frank and Rosaline Kiang*, Oakland, California; to acquire an additional 9.36 percent, for a total of 49.71 percent, of the voting shares of

Met Financial Corporation, Oakland, California, and thereby indirectly acquire Metropolitan National Bank, Oakland, California.

Board of Governors of the Federal Reserve System, December 21, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-31726 Filed 12-28-93; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Dkt. 9231]

Revlon, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a New York-based corporation and its subsidiary to have scientific evidence to support any future claims regarding the effectiveness of cellulite treatments or sunscreen products. Respondents also are required to disclose the sun protection factor value in any sunscreen advertisement in which it proclaims the ability of the product to protect against the sun's rays.

DATES: Amended Complaint and Order issued November 17, 1993.¹

FOR FURTHER INFORMATION CONTACT: Phoebe Morse, Boston Regional Office, Federal Trade Commission, 10 Causeway St., room 1184, Boston, MA. 0222. (617) 565-7240 or Brinley Williams, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., suite 520-A, Cleveland, OH. 44114. (216) 4207.

SUPPLEMENTARY INFORMATION: On Thursday, September 9, 1993, there was published in the *Federal Register*, 58 FR 47463, a proposed consent agreement with analysis in the Matter of Revlon, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Donald S. Clark,
Secretary.

[FR Doc. 93-31787 Filed 12-28-93; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. 9255]

Trans Union Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, an Illinois-based consumer reporting agency to require, in its contracts, that those who obtain consumer reports from the company, in the form of lists developed through credit prescreening, make a firm offer of credit to each person on the list, and to take reasonable steps to enforce those contract provisions. In addition, the respondent is required to provide company officials with a copy of the order, and obtain their signature acknowledging receipt.

DATES: Complaint issued December 15, 1992. Order issued November 18, 1993.¹

FOR FURTHER INFORMATION CONTACT: David Medine, FTC/S-4429, Washington, DC 20580. (202) 326-3224.

SUPPLEMENTARY INFORMATION: On Thursday, September 9, 1993, there was published in the *Federal Register* 58 FR 47466, a proposed consent agreement with analysis in the Matter of Trans Union Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Authority: 15 U.S.C. 1681 *et seq.*

Donald S. Clark,

Secretary.

[FR Doc. 93-31788 Filed 12-28-93; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Head Start Program; Proposed Program Instruction

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of Proposed Program Instruction.

SUMMARY: The Administration on Children, Youth and Families is issuing this Notice of Proposed Program Instruction to obtain public comments on an instruction that would require all Head Start programs to provide a smoke-free environment for children and adults who participate in their program.

DATES: In order to be considered, comments on this proposed Program Instruction must be received on February 28, 1994.

ADDRESSES: Please address comments to the Acting Associate Commissioner, Head Start Bureau, Administration on Children, Youth and Families, PO Box 1182, Washington, DC 20013.

Beginning 14 days after close of the comment period, comments will be available for public inspection in room 2224, 330 C Street, SW., Washington, DC 20201, Monday through Friday between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Madelyn Schultz, Head Start Bureau, (202) 205-8398.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is authorized under the Head Start Act (the Act), Section 635 of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981, as amended (42 U.S.C. 9801 *et seq.*) It is a national program providing comprehensive developmental services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services.

Additionally, Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Parents also receive training and education to foster their understanding of and involvement in the development of their children. In fiscal year 1992, Head Start served 621,078 children through a network of 1,370 grantees and 575 delegate agencies, each of which has an approved written agreement with a grantee to operate a Head Start program.

II. Authority for Proposed Program Instruction

The authority for this Proposed Program Instruction which interprets 45 CFR 1304.2-3 is derived from section 644(c) of the Head Start Act (42 U.S.C. 9839c). The ACYF's authority to issue interpretations of its regulations is a corollary to its obligation under section 644(c) of the Act to make rules and regulations which supplement the administrative requirements and standards set forth in section 644(a).

The Proposed Program Instruction is being issued in the manner prescribed by section 644(d) of the Act. This Section requires that "at least 30 days prior to their effective date, all rules, regulations, guidelines, instructions and application forms shall be published in the *Federal Register* and shall be sent to each grantee with the notification that each such grantee has the right to submit comments to * * * the Secretary prior to the final adoption * * *."

III. Proposed Program Instruction

To: Head Start Grantees and Delegate Agencies.

Subject: Establishing a Smoke-Free Environment in Head Start Programs.

Legal and Related References: The Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*; 45 CFR 1304.2-3.

Purpose: The purpose of this Program Instruction is to set forth Head Start policy requiring Head Start grantees and delegate agencies to create a smoke-free environment and to eliminate exposure to tobacco smoke by children, staff and parents in the Head Start program. Information on the adverse effects of tobacco smoke on the health of children and adults is provided in this Instruction.

Background: There has been a growing concern in America about the harmful effects of exposure to tobacco smoke on both young children and adults. Recent research, cited below, has established that non-smokers can suffer health damage from exposure to tobacco smoke. This is known as passive smoking or environmental tobacco

smoking (ETS) and comes from exposure to the smoke given off by burning cigarettes, cigars and pipes and the smoke exhaled by someone who is smoking.

Passive smoking or ETS is one of the most harmful indoor air pollutants according to an officially released scientific report published by the U.S. Environmental Protection Agency (EPA) in 1992, entitled "Respiratory Health Effects of Passive Smoking: Lung Cancers and Other Disorders." The report reveals that ETS contains 43 carcinogenic (cancer causing) compounds. These compounds are known to produce lung cancer and other respiratory complications in adults and children.

The EPA Fact Sheet entitled "Respiratory Effects of Passive Smoking" (January, 1993) reports the following conclusions based on scientific evidence:

- ETS is responsible for approximately 3,000 lung cancer deaths annually among U.S. adult non-smokers;
- Between 150,000 to 300,000 of the lower respiratory tract infections reported annually in infants and young children under 18 months of age are attributable to ETS exposure;
- ETS exposure increases the prevalence of fluid in the middle ear in children, which is a sign of chronic middle ear disease;
- ETS exposure in children irritates the upper respiratory tract and is associated with a small but significant reduction in lung functioning; and
- ETS exposure in children increases the frequency of episodes and severity of symptoms in asthmatic children. An estimated 200,000 to 1,000,000 asthmatic children have their condition worsened by exposure to ETS.

The detrimental effects of maternal smoking upon prenatal development are widely recognized (National Academy of Sciences Committee to Study the Prevention of Low Birthweight (1985), *Preventing Low Birthweight*, National Academy Press, Washington, DC). Maternal smoking increases the likelihood of low birth weight which correspondingly increases risks for developmental and health impairment. Lactating mothers who continue to smoke after giving birth not only place their children at risk due to the environmental effects of passive smoking, but also expose their children to toxic substances through breast feeding.

Many Head Start centers are required to comply with State and local regulations regarding smoke-free environments for child-care facilities.

Most States have regulations limiting smoking in child day care centers, although few require the centers to be completely smoke-free (Nelson, D.E., Sacks, J.J. and Addiss, D.G. (1993), "Smoking Policies of Licensed Child/Day Care Centers in the United States," *Pediatrics* 91:460-463). However, the American Academy of Pediatrics and the American Public Health Association have recently published guidelines recommending that day care centers adopt smoke-free indoor policies (in "Caring for Our Children—National Health and Safety Performance Standards: Guidelines for Out of Home Child Care Programs," (1992)).

A number of Head Start programs have already initiated policies regarding a smoke-free environment. Policy councils, parents, and staff of these agencies have endorsed the initiatives and are to be commended for their leadership.

Instruction: Because there is considerable evidence that environmental tobacco smoke is harmful to children and adults; and because Head Start has the mission of promoting the healthy development of the children and families it serves, it is imperative that all Head Start programs create smoke-free environments.

Therefore, we are requiring all grantees to work with their Policy Councils, Health Advisory Committees, parents, and staff in order to establish and enforce written policies which will ensure that, effective 60 days from the date of this issuance in its final form, their Head Start program center-based sites will be smoke-free.

The Head Start smoke-free environment policies must prohibit smoking at all times in all space utilized by the program. This includes classrooms, staff offices, kitchens, restrooms, parent and staff meeting rooms (used in the evenings as well as during the day), hallways, outdoor play areas, and vehicles used for transporting children. The policies should also address home visits and group socialization activities (which include field trips, neighborhood walks or other outdoor group activities) so that parents and staff refrain from smoking when Head Start activities are taking place.

For Head Start programs that share a building with other occupants, grantees should take steps to reduce children's exposure to smoke from other sources in the building, for example, by modifying ventilation, altering traffic patterns, and/or establishing a "smoke-free zone" around the Head Start site. If necessary, the Regional Offices (including the American Indian Programs Branch and the Migrant Programs Branch) should be

contacted regarding the use of program funds to address this problem.

We expect that a smoke-free environment will increasingly be recognized as a basic safety and health requirement of any program serving children. We know that Head Start programs will continue their tradition of being in the forefront of advocacy and best practice in promoting the healthy development of young children by establishing a smoke-free environment.

Implementation: This Program Instruction is effective 60 days from the date of the issuance in its final form. Please be advised that a smoke-free environment will be one of the requirements monitored during on-site program reviews. Evidence of compliance will include:

- The posting of written policies, approved by Policy Councils, regarding a smoke-free environment;
- Evidence that all staff have been informed about these policies;
- Correspondence and meeting notices advising parents and staff of the new policies;
- Evidence of compliance with a no-smoking policy through physical inspection of the facility; and
- For programs that share space in a building with other occupants, evidence of efforts to limit the introduction of environmental tobacco smoke (ETS) from outside sources into the Head Start space.

To assist Head Start programs in their efforts to provide a smoke-free environment for Head Start children and their families, a listing of Federal and private information resources (such as an annotated bibliography regarding smoke-free environments and ETS, guides to implement smoke-free environments, additional sources of Federal information, etc.) will be made available by the Administration on Children, Youth and Families, following publication of this Program Instruction in its final form.

III. Impact Analysis

Paperwork Reduction Act

Under 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 record-keeping requirement inherent in a proposed or final rule, program announcement, or program instruction. This program instruction does not contain information collection requirements or increase Federal paperwork burden on the public or private sector. Thus, no submission to OMB is required.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)
Dated: August 27, 1993.

Joseph A. Mottola,

Acting Commissioner, Administration on Children, Youth and Families.

[FR Doc. 93-31714 Filed 12-28-93; 8:45 am]

BILLING CODE 4184-01-M

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-436), the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

NAME: Advisory Committee on Childhood Lead Poisoning Prevention.

TIMES AND DATES: 1 p.m.-5 p.m., February 14, 1994. 8:30 a.m.-4 p.m., February 15, 1994.

PLACE: Sheraton Century Center Hotel, 2000 Century Boulevard, NE., Atlanta, Georgia 30345-3377.

STATUS: Open to the public, limited only by the space available.

SUPPLEMENTARY INFORMATION: In October 1991 the Secretary of the Department of Health and Human Services released the CDC policy statement, "Preventing Lead Poisoning in Young Children." This statement is used by pediatricians and lead screening programs throughout the United States, and great progress has been made in implementing the statement. Copies of this statement may be requested from the contact person listed below.

MATTERS TO BE DISCUSSED: Since the release of this statement, new data have become available and some information gaps have been identified. The committee met in June 1993 to discuss this new research data and information on management of lead toxicity and make recommendations concerning revision of the statement. The committee will discuss progress to date on draft chapters and other issues related to revising the statement, specifically, screening issues, environmental management, diagnostic evaluation and medical management, lead hazards in the community, and the plan for completing the statement.

Agenda items are subject to change as priorities dictate.

Persons wishing to make written comments regarding additions or changes to the statement should provide

such written comments to the contact person no later than February 9, 1994.

Persons wishing to make oral comments on the statement at the meeting should notify the contact person in writing or by telephone no later than close of business February 8, 1994. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. Depending on the time available and the number of requests, it may be necessary to limit the time of each presenter.

CONTACT PERSON FOR MORE INFORMATION: Barbara Nelson, Program Analyst, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE., (F42), Atlanta, Georgia 30341-3724, telephone 404/488-7330, FAX 404/488-7335.

Dated: December 22, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-31750 Filed 12-28-93; 8:45 am]

BILLING CODE 4160-18-M

CDC Advisory Committee on the Prevention of HIV Infection (CDC ACPHI): Executive Subcommittee: 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 subcommittee meeting.

NAME: CDC ACPHI Executive Subcommittee.

TIME AND DATE: 9:30 a.m.-2:30 p.m., January 18, 1994.

PLACE: Henry J. Kaiser Family Foundation, Board Room, 2400 Sand Hill Road, Menlo Park, California 94025.

STATUS: Open to the public, limited only by the space available.

PURPOSE: The Executive Subcommittee will review the final reports of the five subcommittees which conducted an external review of CDC's HIV prevention programs. In-depth discussions will lead to the development of a list of recommendations which will be presented to the full advisory committee at a meeting tentatively scheduled for late February. Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/

AIDS, CDC, 1600 Clifton Road, N.E., Mailstop E-40, Atlanta, Georgia 30333, telephone (404) 639-2918.

Dated: December 22, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-31748 Filed 12-28-93; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. January 27 and 28, 1994, 8 a.m., Versailles Ballrooms I and II, Holiday Inn Bethesda, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, January 27, 1994, 8 a.m. to 8:45 a.m., unless public participation does not last that long; open committee discussion, 8:45 a.m. to 3:15 p.m.; closed committee deliberations, 3:15 p.m. to 3:45 p.m.; open committee discussion, 3:45 p.m. to 6 p.m.; open public hearing, January 28, 1994, 8 a.m. to 8:45 a.m., unless public participation does not last that long; open committee discussion, 8:45 a.m. to 9:30 a.m.; closed committee deliberations, 9:30 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 6 p.m.; Nancy T. Cherry or Stephanie A. Milwit, Center for Biologics Evaluation and Research (HFM-21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-594-1054.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the

committee. Those desiring to make formal presentations should notify the contact person before January 20, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On January 27, 1994, the committee will: (1) Discuss the influenza virus vaccine formulation for 1994-1995; (2) review safety and efficacy data for a vaccine for the prevention of varicella; and (3) discuss indications for use of such a product. On January 28, 1994, the committee will review safety and efficacy data for a vaccine for the prevention of hepatitis A. The committee will also discuss alternative immunization schedules for hepatitis B vaccines.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending product licensing applications. These portions of the meetings will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or

otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files

compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: December 22, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 93-31769 Filed 12-28-93; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated Licensing Specialist at the Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone 301/496-7735; fax 301/402-0220). A signed Confidentiality Agreement will be required to receive copies of the patent applications. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

A Process of Making Tetrahydropteroyl-poly-L-Glutamic Acid Derivatives

Fitzhugh, A. (NCI)
Serial No. 07/558,535
Filed 27 Jul 90
US Patent 5,153,309 issued 6 Oct 92;
and

A Process of Separating the Diastereomers of (6R,6S)-5,8,7,8-Tetrahydrofolic Acid Derivatives

Fitzhugh, A.L., Akee, R.K. (NCI)
Serial No. 07/977,008
Filed 16 Nov 92
Licensing Specialist: Carol Lavrich

Together these processes allow the large scale, purely chemical synthesis of 6S(or 6R)-tetrahydropteroyl-poly-L-glutamic acid, without the use of enzymes or of special chiral separation steps. Derivatives of the 6S product are useful as substrates or inhibitors of folic acid enzymes, and, have use in cancer treatment. U.S. patent 5,153,309 concerns a simple, inexpensive, purely chemical synthesis of the poly-glutamic acid product starting from the mono-glutamic acid. The patent application 07/977,008 concerns a simple, inexpensive process of resolving the 6S and 6R diastereomers of the mono-glutamic acid starting material by using a simple esterification procedure, then resolution using normal separation techniques such as HPLC, non-chiral column chromatography or fractional crystallization.

Mammalian Bilirubin UDP-Glucuronosyltransferase Clones and Methods of Use Thereof

Owens, I.S., Ritter, J.K. (NICHD)

Serial No. 07/639,453

Filed 10 Jan 91

Licensing Specialist: Carol Lavrich

This invention provides cDNA clones which encode mammalian bilirubin UDP-glucuronosyltransferase. These cDNA clones may be used in gene therapy for patients with the fatal Crigler-Najjar Type I Syndrome and in the development of a gene-based prenatal diagnostic probe for fetuses at risk for this syndrome. Liver transplantation is currently the only treatment for Crigler-Najjar Type I Syndrome. These cDNA clones may also be used as inexpensive diagnostic probes for patients with other hyperbilirubinemic syndromes such as Gilbert's Disease and Type II Crigler-Najjar Syndrome.

Qualification of Indicators of Fibrosis

Striker, G., Striker, L.J. (NIDDK)

Serial No. 07/963,475

Filed 10 Oct 92

Licensing Specialist: Carol Lavrich

This invention involves a method for the early diagnosis and monitoring of the progression of fibrotic diseases and glomerulonephritis. Accurate early diagnosis and evaluation of treatment of a fibrosing condition is important. At present, there is a severe lack of adequately diagnostic capability of fibrotic diseases. This invention utilizes a combination of reverse transcription, polymerase chain reaction, and microdissection to diagnose and monitor a fibrosing condition at the molecular level. This invention overcomes obstacles encountered with accurately diagnosing fibrotic diseases quickly and inexpensively.

Reducing Cytopathicity in T Cells Infected by Lentivirus

Cohen, D.I., Samelson, L.E., Lane, H.C., Tani, Y. (NIAID)

Serial No. 07/899,210

Filed 16 Jan 92

Licensing Contact: Mark D. Hankins

A new process capable of limiting T-cell death (also termed T-cell syncytium formation) initiated by HIV-1 infection has been discovered. It is believed that such cell death may be due to intracellular signals transmitted when HIV-1 envelope glycoproteins interact with their cellular receptor, CD4, and other receptors on a second cell. When certain intercellular signals associated with HIV-1 envelope are blocked, the cellular changes triggered by HIV are also dramatically inhibited. These experiments employed a new T-cell line (HIVenv2-8) stably transfected to express all of the HIV envelope glycoproteins, including gp160, gp120,

and gp41. This cell line has been used to find that a specific inhibitor of protein tyrosine kinases, herbimycin A, reduced HIV enveloped-associated syncytium formation and thus may be a basis for treatment of HIV infection.

Composition and Method for Weight Reduction in Mammals

Yeh, S.Y. (NIDA)

Serial No. 08/010,343 [CIP of 07/906,945 (ABN)]

Filed 28 Jan 93

Licensing Specialist: Carol Lavrich

Substituted hydroxybenzylalcohols, including (alpha)-methylepinephrine, (alpha)-methylnorepinephrine, metaraminol and N-substituted (alpha)-methylnorepinephrines, have been discovered to be useful as weight reducing agents in mammals. The derivatives exhibit potent anorectic activity without having strong CNS stimulatory properties. Animal studies demonstrate the effectiveness of these compounds for body weight reduction. Pharmaceutical compositions, some novel compounds, and methods are claimed.

Muscarinic Receptor Fusion Proteins and Subtype-Specific Antisera

Levey, A.I., Stormann, T., Brann, M.R. (NINDS)

Filed 26 Apr 93

Serial No. 08/053,292 [FWC of 07/654,971 (ABN)]

Licensing Specialist: Arthur Cohn

Recombinant proteins and protein-generated antibodies directed against the five human muscarinic receptors have been developed. These receptors mediate acetylcholine function in the normal nervous system and are believed to be critical in the pathogenesis and/or treatment of many neurological and psychiatric disorders. Recombinant expression plasmids which encode unique regions of the inner third (i3) cytoplasmic loops of the human muscarinic receptors, m1-m5, were made. The expressed fusion proteins were used to produce polyclonal antisera. The novel antibodies selectively react with the five receptors *in vitro* and therefore may be useful in localizing and measuring muscarinic receptors in cells and tissues. Prior technologies include antibodies raised to short, synthetic oligopeptides that are limited in their ability to recognize native proteins and receptors. The new recombinant proteins and antibodies are proposed for use in basic research, drug development, and possibly as diagnostic tools.

Method and Use of Trichohyalin and Transglutaminase-3Steinert, P.M., Lee, S-C, In-Gyu, K.
(NIAMS)

Serial No. 08/056,200

Filed 30 Apr 93

Licensing Specialist: Carol Lavrich

The invention relates to the discovery of the DNA and RNA sequences of several proteins which are involved in forming structural components of the hair follicle and epidermis: human trichohyalin, human transglutaminase-3 and mouse transglutaminase-3. Human trichohyalin is an ideal substrate for cross-linking to other proteins by transglutaminase enzymes. Cross-linking forms a tough, fibrous, and insoluble gel. Differing amounts of crosslinking can form products of differing degrees of flexibility and/or rigidity. Trichohyalin and transglutaminase-3 proteins can be used to form gels for medicinal, food and cosmetic purposes. Another aspect of the invention is directed to a method of facilitating the healing of wounds using the trichohyalin and transglutaminase proteins.

Metalloproteinase PeptidesStetler-Stevenson, W.G., Liotta, L.A.,
Kruzsch, H.C. (NCI)Serial No. 08/075,855 (FWC of 07/
837,102)

Filed 10 Jun 93

Licensing Specialist: Daniel Passeri

Inappropriate degradation of extracellular matrix molecules by metalloproteinases plays an important role in a wide variety of pathologic conditions including neoplasia and arthritis. This invention is an isolated protein of approximately 23,000 daltons in size which binds to metalloproteinases with high affinity, can be purified using affinity chromatography on solid phase metalloproteinases, and is potentially useful for therapy of pathologic conditions involving the inappropriate production of metalloproteinases.

Neutralizing Monoclonal Antibody to Human Alpha PDGF ReceptorsLaRochelle, W., Pierce, J., Jensen, R.,
Aaronson, S.A. (NCI)

Serial No. 08/081,216

Filed 25 Jun 93

Licensing Specialist: Daniel Passeri

These monoclonal antibodies specifically bind to an epitope on α PDGFR, inhibit PDGF binding with PDGF, antagonize PDGF, and does not bind β PDGFR receptor. A hybridoma cell line producing such a monoclonal antibody, methods of *in vivo* imaging of a pathological condition, and methods

of inhibiting the growth of a neoplasia expressing α PDGFR which use these monoclonal antibodies are also described. *In vitro* assays for detecting the presence of α PDGFR and for evaluating the binding affinity of a test compound are also described.

Cloning of the recA Gene from Thermus Aquaticus YT-1Camerini-Otero, R.D., Angov, E.
(NIDDK)

Filed 26 Jul 93

Serial No. 08/097,831 (CIP of 08/
041,341 and 08/089,910)

Licensing Specialist, Arthur Cohn

An oligonucleotide encoding the *Thermus aquaticus* recA protein, vectors containing the gene, and a purified *T. aquaticus* recA protein have been isolated. The recA protein is a critical component in recombinational DNA repair, homologous genetic recombination and the cellular SOS response which occurs in response to DNA damage. Unlike previously cloned recA proteins, a thermostable analogue, such as the one provided in the present invention, will be suitable for various procedures which require the enzyme to act at higher temperatures. The methods provided include: hybridizing a primer to a template with increased binding affinity at higher temperatures, improving the accuracy of sequencing DNA by the DNA chip method, and producing a oligonucleotide that is complementary to a DNA template, e.g., as part of a gene amplification technique, such as Polymerase Chain Reaction (PCR), self-sustained sequence replication (3SR), beta-Q replicase (β QR), first strand synthesis with DNA polymerase, and ligation amplification reaction or ligase-based amplification system (LAR/LAS). The recA protein of this invention will also be useful in the practice of the related patent applications disclosing methods of constructing three-stranded DNA (see U.S. Patent Applications 07/611,268, 07/733,744, 08/041,341 and 08/089,910).

Pre-Binding of Retroviral Vector Particles With Complement Components to Enable the Performance of Human Gene Therapy in Vivo

Mason, J.M. (NHLBI)

Serial No. 08/098,944

Filed 28 Jul 93

Licensing Specialist: Carol Lavrich

This invention relates to an improvement in the use of retroviral vectors in gene therapy. Most gene therapy protocols involve treating cells from the patient *ex vivo* and then reintroducing the cells into the patient. *In vivo* gene therapy treatment is

preferred because the gene can be introduced into the cells without removing the cells from the patient. The use of retroviral gene therapy vectors *in vivo* has been limited because many retroviruses are inactivated in the circulatory system of primates and humans by the complement system. This invention specifically discloses the use of C1 complement subcomponents or of antibody fragments to protect retroviral vector particles from attack by primate complement systems *in vivo*. The invention has been shown to work in human serum. Pharmaceutical compositions containing retroviral vector particles prebound with C1 complement subcomponents or with antibody fragments, as well as gene therapy methods, are part of this invention.

Method of Stimulating Immunity by Peripheral Delivery of Non-Peptide Opioids

Weber, R.J. and Rice, K.C. (FDA)

Serial No. 08/107,192

Filed 17 Aug 93

Licensing Specialist: Carol Lavrich

This invention concerns a method of stimulating the immune system by administering either a) a non-peptide opioid incapable of passing the blood-brain barrier (exemplified by noroxymorphone) or b) the same type of non-peptide opioid and interleukin-2 (IL-2). Mice given either a) or b) had spleen cells which proliferated in response to nitrogens with at least a 2-fold enhancement over control animals. The same mice were shown to have natural killer cells with twice the normal activity as measured by a standard chromium release assay with a mouse lymphoma cell line as targets. Administration of b) resulted in a synergistic effect and means that coadministration of the non-peptide opioid reduces the dose of IL-2 needed. Applications include treating immunodeficiency conditions and any other where IL-2 is indicated.

Convection-Enhanced Drug Delivery SystemLaske, D.W., Oldfield, E.H., Bobo, R.H.,
Dedrick, R.L., Morrison, P.F. (NINDS)

Serial No. 08/112,370

Filed 27 Aug 93

Licensing Specialist: John Fahner-
Vihtelic

This application describes an apparatus and method of convection-enhanced delivery of drugs into the brain and other solid tissue structures. The method involves positioning the tip of an infusion catheter within a tissue structure and supplying an agent

through the catheter while maintaining a pressure gradient from the tip of the catheter during infusion. The catheter is connected to a pump which delivers the desired drug and maintains a desired pressure gradient throughout delivery of the agent. Agent delivery at rates of 0.5 to 4.0 microliters/minute have been used experimentally with infusion distances greater than 1 cm. from the delivery source. This technology addresses the problem of delivering high molecular weight polar molecules such as: growth factors, enzymes, antibodies, protein conjugates, and genetic vectors.

Use of Synthetic Peptides to Modify the Cytoskeleton of Cells

Steinert, P.M., Goldman, R.D.,

DiGovanna, J.J. (NIAMS)

Serial No. 08/112,783

Filed 25 Aug 93

Licensing Specialist: Daniel Passeri

Synthetic peptides corresponding to different regions of the human keratin 1 chain can disassemble preformed keratin intermediate filaments or inhibit filament assembly both *in vitro* and *in vivo*. The disruption of keratin filaments may have therapeutic applications in the treatment of epithelial abnormalities.

Dated: December 14, 1993.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc. 93-31759 Filed 12-28-93; 8:45 am]

BILLING CODE 4140-01-M

John E. Fogarty International Center for Advanced Study in the Health Sciences; Meeting of the Fogarty International Center Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the twenty-sixth meeting of the Fogarty International Center (FIC) Advisory Board, February 8, 1994, in the Lawton Chiles International House (Building 16), at the National Institutes of Health.

The meeting will be open to the public from 8:30 a.m. to 2:15 p.m. the morning agenda will include a report by the Director, FIC; a report of December 1 meeting of the Advisory Committee to the Director, NIH; and presentations on the NIH Office of AIDS Research, and the World Bank's World Development Report—1993.

The afternoon agenda will include reports on FIC's Long-Range Plan, the Board's Biennial Report to Congress, and the Inclusion of Women and Minorities in NIH Research.

In accordance with the provisions of Sections 552b(c)(4) and 552b(c)(6), Title

5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public from 2:45 p.m. to adjournment for the review of applications to the International Research Fellowship and Senior International Fellowship, and Fogarty International Research Collaboration Awards programs; and nominations to the Scholars-in-Residence program and proposals for Scholar's conferences.

Myra Halem, Committee Management Assistant, Fogarty International Center, Building 31, room B2C08, National Institutes of Health, Bethesda, Maryland 20892 (301-496-1491), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Coralie Farlee, Assistant Director for International Legislation and Advisory Activities, Fogarty International Center (Executive Secretary), Building 31, room B2C08, telephone 301-496-1491, will provide substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Halem at least 2 weeks in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.989, Senior International Awards Program, and 93.934, Fogarty International Research Collaboration Award.)

Dated: December 22, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-31760 Filed 12-28-93; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Biometry and Epidemiology Contract Review Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, February 3-4, 1994, at the Executive Plaza North Building, Conference room G, 6130 Executive Boulevard, Rockville, Maryland 20852.

This meeting will be open to the public from 9 a.m. to 10 a.m. on February 3 to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on February 3 from 10 a.m. to recess and on February 4 from 9 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and

the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Executive Plaza North, room 630E, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892-9903, Tel. (301) 496-5708, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Harvey P. Stein, Scientific Review Administrator, Contracts Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 601C, 9000 Rockville Pike, Bethesda, Maryland 20892-9903, Tel. (301) 496-7030, will furnish substantive program information.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Ms. Alma O. Carter at (301) 496-7523 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research, 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: December 22, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-31851 Filed 12-28-93; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting, President's Cancer Panel

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, January 31, 1994 at the National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10.

This meeting will be open to the public on January 31, 1994 from 8 a.m. to approximately 5 p.m. The topic will be: The Role of Government Agencies in the National Cancer Program.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, Executive Plaza North, room 630, 9000 Rockville Pike, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide a roster of the committee members upon request.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Ms. Nora Winfrey, (301-496-1148), in advance of the meeting.

Dr. Maureen O. Wilson, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, room 4A34, National Institute of Health, Bethesda, Maryland 20892 (301/496-1148) will provide a roster of the Panel members and substantive program information upon request.

Dated: December 22, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-31761 Filed 12-28-93; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on the National Marrow Donor Program

Date of Meeting: January 12, 1994

Time of Meeting: 9 a.m.

Place of Meeting: Bethesda Hyatt Regency, Bethesda, Maryland

Agenda: To review contract proposal(s).

Contact Person: C. James Scheirer, Ph.D., 5333 Westbard Avenue, room 548, Bethesda, Maryland 20892, (301) 594-7452.

Name of Panel: NHLBI SEP on Ischemic Heart Disease, Sudden Cardiac Death and Heart Failure (Specialized Centers)

Dates of Meeting: January 18-20, 1994

Time of Meeting: 7 p.m.

Place of Meeting: Holiday Inn Chevy Chase, Chevy Chase, Maryland

Agenda: To review grant application(s).

Contact Person: Carl A. Ohata, Ph.D., 5333 Westbard Avenue, room 5A09,

Bethesda, Maryland 20892, (301) 594-7483.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: December 22, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-31763 Filed 12-28-93; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Meeting of the National Advisory Dental Research Council

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held January 24-25, 1994, Conference Room 10, Building 31C, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 8:30 a.m. to recess on January 24 for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting of the Council will be closed to the public on January 25 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. 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.

Dr. Dushanka V. Kleinman, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, room 2C39, Bethesda, Maryland 20892, (telephone (301) 496-9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed above in advance of the meetings.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: December 22, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-31765 Filed 12-28-93; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Deafness and Other Communication Disorders; Meeting of the Communication Disorders Review Committee

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Communication Disorders Review Committee on February 17-18, 1994. The Committee will meet at the Hyatt Regency-Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814. Notice of the meeting room will be posted in the hotel lobby.

The Committee meeting will be open to the public from 8 a.m. until approximately 8:30 a.m. on February 17 to discuss administrative details relating to Committee business. Attendance by the public will be limited to space available.

The meeting of the Committee will be disclosed to the public from approximately 8:30 a.m. on February 17 until adjournment on February 18 in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion, and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Committee meeting may be obtained from Dr. Craig A. Jordan, Scientific Review Administrator, National Institute on Deafness and Other Communication Disorders, room 400B Executive Plaza South, Bethesda, Maryland 20892, 301-496-8683. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Jordan two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: December 22, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-31764 Filed 12-28-93; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Drug Abuse; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Council on Drug Abuse, National Institute on Drug Abuse on January 25-26, 1994, at the National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on January 25 from 9 a.m. to 1 p.m. and on January 26 from 9 a.m. to 5 p.m. for announcements and reports of administrative, legislative, and program developments in the drug abuse field.

In accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on January 25 from 1 p.m. to 5 p.m. for the review, discussion, and evaluation of grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and a roster of committee members may be obtained from Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, room 10-42, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443-2755).

Substantive program information may be obtained from Ms. Eleanor C. Friedenber, room 10-42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443-2755).

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs.)

Dated: December 22, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-31762 Filed 12-28-93; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Notice Regarding Section 602 of the Veterans Health Care Act of 1992 Entity Guidelines

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: Section 602 of Public Law 102-585, the "Veterans Health Care Act of 1992" (the "Act"), enacted section 340B of the Public Health Service Act ("PHS Act"), "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement (the "Agreement") with the Secretary of Health and Human Services in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed the amount determined under a statutory formula.

The purpose of this notice is to inform the covered entities of recent decisions regarding program implementation. Further, covered entities who wish to participate in the drug discount program have certain responsibilities created by the Agreement and section 340B of the PHS Act. These include the prohibition against selling or transferring section 340B discounted drugs to persons who are not patients of the entity, (section 340B(a)(5)(B) of the PHS Act) and generating Medicaid rebates while accepting section 340B discounts on the same drugs, (section 340B(a)(5)(A) of the PHS Act). The Department has developed guidelines related to these prohibitions, and this notice discusses the proposed guidelines and invites public comment.

Section II contains a description of the mechanism to prevent duplicate discounts and rebates and methods for its implementation. The mechanism was published on May 7, 1993, and public comments were submitted at that time. We are not inviting further comment on this section.

DATES: The public is invited to submit comments on the proposed covered entity guidelines (all sections except II which was subject to an earlier notice inviting public comment) by January 28, 1994. Subject to consideration of the comments submitted, the Department intends to publish a final notice regarding these entity guidelines.

FOR FURTHER INFORMATION CONTACT: Marsha Alvarez, R. Ph., Chief Pharmacy Officer, Attn: Drug Pricing Program, Bureau of Primary Health Care, Health Resources and Services Administration, East West Towers Rm 10-3A1,

Bethesda, Maryland 20814, Phone: (301) 594-4353.

ADDRESSES: Comments should be submitted to Marsha Alvarez at the address listed above.

SUPPLEMENTARY INFORMATION: The PHS Act and the Agreement contain several important prohibitions for covered entities.

(I). Confidential Drug Pricing Information

Section III(f) of the Public Health Service (PHS) Pharmaceutical Pricing Agreement states that "[t]he Secretary shall require, under a reasonable schedule of implementation, that covered entities not reveal confidential drug pricing information." "Confidential drug pricing information" includes both "best price" and "average manufacturer price." The quoted price or the actual price given by the manufacturer to the covered entity is not confidential.

(II). Duplicate Discount/Rebate Potential

There is a potential for a drug purchased by a covered entity at the statutory discount to be subject to a Medicaid rebate under section 1927 of the Social Security Act, if the drug is reimbursed by the Medicaid program. Accordingly, the PHS Act directs the Secretary of HHS to establish a mechanism to avoid the potential double price reduction.

In consultation with the Health Care Financing Administration (HCFA), which is responsible for the administration of the Medicaid program, the PHS developed a mechanism. The proposed mechanism was published in the *Federal Register* on May 7, 1993, and the Department requested public comment. The comments were addressed in a final notice published on June 23, 1993, at 58 FR 34058, which adopted the proposed mechanism without substantive change. The Department began implementation of the mechanism on July 1, 1993. The mechanism is as follows:

(a). Billing Per Encounter

For all-inclusive rates (either per encounter or visit), drug purchases are not billed as separate cost items; therefore, there is no opportunity for a Medicaid rebate to be sought. To the extent that covered entities are reimbursed by Medicaid through all-inclusive rates, there is no possibility that the duplicate discount and rebate can occur. These entities included on the initial list of covered entities may request drug discounts retroactive to December 1, 1992, if appropriate

documentation of drug purchases is presented to the manufacturer.

(b). Billing on a Cost Basis for Drugs

For other entities billing on a cost basis for drug purchases, PHS is providing a list of participating covered entities to State Medicaid agencies with the Medicaid provider numbers for each covered entity in the respective State. Based on the provider number, the State Medicaid agency will create a separate provider file for claims from covered entities. They will exclude data from these provider files when generating the rebate bills to the manufacturers under the Medicaid rebate program.

The entity must provide the Drug Pricing Program with the Medicaid provider number so that State Medicaid agencies can create the appropriate exclusion files. The first group of State Medicaid provider numbers was mailed to the State Medicaid agencies on June 25, 1993. The Department will create a separate computer file on the Electronic Data Retrieval System which will list those entities and their Medicaid provider numbers which were added to the eligibility list and entities which chose to withdraw from the program. From October 1993, until June 30, 1994, the computer file will be updated on a quarterly basis. Thereafter, the file will be updated annually.

There are large facilities which house several different clinics. Some of these clinics are covered entities eligible for the section 340B discounts and others are not eligible. Because the exclusion file (i.e., flagging or marking the entity file for exclusion from Medicaid rebate program) will effectively eliminate all of the facility's outpatient drug purchases from the Medicaid rebate program, the facility must request from its respective State Medicaid agency a separate Medicaid provider number for the eligible clinics. With this separate number, only the outpatient drug purchases from the eligible clinics will be excluded from the Medicaid rebate program. For those States which cannot generate additional Medicaid provider numbers for entities, covered entities must discuss an alternative arrangement with the States to accomplish this objective.

A covered entity which bills Medicaid separately for covered outpatient drugs can accept a discount on those drugs for which no claims for Medicaid reimbursement were sent to its respective State Medicaid agency. For drugs reimbursed by Medicaid, the covered entity may accept the discounted price once its Medicaid provider number is received by the Drug Pricing Program, and the Program

provides the number to the respective State Medicaid agency through the regularly scheduled updates to the covered entity file. If a covered entity has adequate documentation proving drugs purchased at the section 340B discount were not billed separately to Medicaid or did not generate Medicaid rebates, the entity may accept the discount and also request discounts retroactive to December 1, 1992. For retroactive adjustments, the entity must have been listed on the initial eligibility list.

(c). Billing Medicaid at Acquisition Cost

When a covered entity submits a bill to the State Medicaid agency for a drug purchase by or on behalf of a Medicaid beneficiary, the amount billed may not exceed the entity's actual acquisition cost for the drug, as charged by the manufacturer at a price consistent with the Veterans Health Care Act of 1992, plus a reasonable dispensing fee established by the State Medicaid agency. This will assure that the cost savings to the covered entity will be passed on to the State Medicaid agency, offset the loss of the collection of the rebate by that agency, and prevent the duplicate discount/rebate by the drug manufacturer. This mechanism is consistent with the Veterans Health Care Act and the limitations established in the Medicaid regulations, 42 CFR 447.331-447.334, which limit the amount the Medicaid State agency may reimburse providers.

(III). Eligibility for Retroactive Discounts

Until November 30, 1993, or 30 days after publication of the final entity guidelines, whichever is later, eligible covered entities included on the initial eligibility list may request retroactive discounts (discounts, rebates, or account credit) for covered outpatient drugs purchased retroactive to December 1, 1992. Only those entities on the initial eligibility list that (1) bill covered outpatient drugs using an all-inclusive rate (either per visit or per encounter), (2) have not billed Medicaid for those covered outpatient drugs since December 1, 1992, or (3) have adequate documentation proving that drugs for which a retroactive discount is being requested have not generated Medicaid rebates, may request the retroactive discount.

(IV). Entity Guidelines Regarding Drug Diversion

Section 340B contains a number of prohibitions related to drug diversion which might require entities to develop alternate systems. These systems will be

necessary to avoid diversion and will provide adequate documentation for audit purposes.

(a). Diversion to Nonpatients of the Covered Entity

Covered entities are required not to resell or otherwise transfer outpatient drugs purchased at the statutory discount to an individual who is not a patient of the entity. If individuals, other than patients of the covered entity obtain covered outpatient drugs from the pharmaceutical dispensing facility, the entity must take affirmative steps to prevent their receipt of discounted drugs. The entity must develop and institute adequate safeguards to prevent the transfer of discounted outpatient drugs to individuals who are not eligible for the discount (e.g., separate purchasing accounts and dispensing records).

(b). Diversion to Ineligible Entities Within the Same Facility

Section 340B(a)(6) of the PHS Act recognizes that a covered entity may be part of a larger facility and states that the larger facility (e.g., a hospital) will not be considered eligible for the discounted drug prices unless it is listed as a covered entity. Only the covered entity (e.g., the eligible clinic) housed within the hospital organization will be eligible for section 340B drug discounts. Another example is a department of health that contains an eligible family planning clinic but itself is not covered. Only the family planning clinic is eligible for section 340B discounts. Therefore, the facility which contains an eligible entity within its structure is required to establish separate purchasing accounts and maintain separate dispensing records for the eligible entity.

(c). Diversion to Excluded Services of the Covered Entity

Section 340B mandates the statutory price only for outpatient drugs; therefore, the covered entity must use these discounted drugs only in connection with outpatient services. Because the covered entity may not use the covered outpatient drug in excluded services such as inpatient, a separate method for purchasing and dispensing the discounted drugs (or alternate systems as approved by the Secretary) is required.

(d). Adequate Systems To Safeguard Against Diversion

Developing a separate purchasing system, including separate purchase number and a separate dispensing system for outpatient drugs, should

provide a sufficient audit trail to prove the prevention of drug diversion.

The covered entity may, at its option, develop an alternative system, short of tracking each discounted drug through the purchasing and dispensing process, by which it can prove compliance. If an alternate system of tracking is proposed to be used, this system must meet criteria developed by the Drug Pricing Program. These criteria will be developed at a later date. The Drug Pricing Program welcomes comments or suggestions concerning alternative tracking systems that could be included in the program.

(V). Audit Requirements

All entities receiving statutory prices are required to maintain records of purchases of covered outpatient drugs and of any claims for reimbursement submitted for such drugs under title XIX of the Social Security Act. The entity must permit HHS and the manufacturer to audit any record of a covered drug purchase that was subject to the discount. Manufacturer audits will be conducted in accordance with procedures developed by the Secretary of HHS. Until these guidelines are developed and published in the *Federal Register*, entities are not required to permit audits by manufacturers except as approved by the Secretary. This notice addresses only audits related to purchases as a covered entity; it does not address other audit requirements related to participation in State Medicaid programs or receipt of Federal grant funding.

(VI). Entity Participation

Covered entity participation in the section 340B drug discount program is voluntary. Once an entity has elected to participate in the program and has submitted its Medicaid provider number to the Drug Pricing Program, the entity must wait to withdraw from the program until the next official updating of the eligible entity list. The entity must comply with all requirements of the discount program until the date it is removed from the eligibility list. This date can be obtained from the Office of Drug Pricing Program. This restriction does not apply to entities that use all-inclusive rates or that do not bill Medicaid for covered outpatient drugs.

(VII). Group Purchasing

(a). Disproportionate Share Hospitals

The Department has interpreted the group purchasing restriction of section 340B(a)(4)(L)(iii) regarding disproportionate share hospitals ("DSH") that are covered entities as

follows: (1) A DSH may participate in a group purchasing arrangement for inpatient drug use without affecting its eligibility to purchase section 340B discounted drugs. (2) If a DSH participates in a group purchasing organization (GPO) or arrangement for covered outpatient drugs, the DSH will no longer be an eligible covered entity and cannot purchase covered outpatient drugs at the section 340B discount prices. This is a new policy approach which we are considering adopting for two reasons. First, this approach appears to carry out more fully the legislative intent. Section 340B(a)(4)(l) states that a hospital is a covered entity if it meets three criteria. This first two criteria deal with the public nature of the hospital and the level of its disproportionate share adjustment percentage. The third criterion states that the hospital must not "obtain covered outpatient drugs through a group purchasing organization or other group purchasing arrangement," section 340B(a)(4)(l)(iii). The proposed policy would appear to achieve the Congressional intent better than the earlier interpretation.

Second, the earlier interpretation which allowed DSHs to participate both in the section 340B discount program and also in a GPO resulted in Federal dollars being lost. When a DSH elected to participate in the program, it provided its Medicaid provider number to allow the State Medicaid agency to exclude it from the Medicaid rebate mechanism. The result was that GPO drugs were excluded from rebate mechanism, with Medicaid losing the statutory rebate it would otherwise receive. Thus, while the DSH could obtain comparable price reductions for outpatient drugs purchased through a GPO, the corresponding Federal savings would be lost.

(b). Group Purchasing Arrangements - Other

States, or other groups, which purchase drugs for covered entities (other than disproportionate share hospitals) are not included on the list of covered entities; however, they are eligible to purchase at the section 340B discount if the following requirements are met: (1) The group purchasing arrangement must be comprised of only covered entities, or (2) if group purchasing arrangements contain entities which are not eligible for the discount, separate purchasing accounts and dispensing/distribution must be maintained.

(VIII). Purchasing Agents

A covered entity is permitted to use a purchasing agent without forfeiting its right to the section 340B drug discounts. If a purchasing agent is used, the arrangement must be in writing and the terms of the agent's relationship with the entity must be clearly defined. The entity and the agent should decide whether the agent simply negotiates the drug purchasing contracts on behalf of the entity or actually receives drug shipments for distribution to the entity. If the latter, the transfer of purchased pharmaceuticals from an agent to the entity would not be viewed as drug diversion. This paragraph does not supersede the statutory limitations that DSHs eligible to receive the section 340B drug discounts may not participate in group purchasing arrangements.

(IX). Definition of Covered Outpatient Drug

The Department has adopted an interpretation of the statutory definition of "covered outpatient drug" developed by the Health Care Financing Administration ("HCFA"). Section 1927(k)(2) of the Social Security Act defines "covered outpatient drug" to include most drugs and biologicals which may be dispensed only by prescription and which require approval by the Food and Drug Administration or a license under section 351 of the PHS Act. Section 1927(k)(3) limits the definition of "covered outpatient drug" to exclude certain settings (e.g., such services as emergency room, hospice, dental, physician, nursing facilities, x-ray, lab, and renal dialysis) in some instances. In these settings, if a covered drug is included in the per diem rate (i.e., bundled with other payments in an all-inclusive, per visit, or an encounter rate), it will not be included in the section 340B discount program. However, if a covered drug is billed and paid for instead as a separate line item as an outpatient drug in a cost basis billing system, this drug will be included in the program.

(X). Dealing Direct or Through a Wholesaler

Under the PHS Agreement signed by each manufacturer participating in the Medicaid program, the manufacturer has the option of dealing either directly with the covered entity or through a wholesaler (the Agreement, section II(a)(3)). If purchasing through a wholesaler, the entity will be required to provide the manufacturer with information necessary to arrange for such purchases consistent with the terms of the Agreement.

The purpose of the option for direct or wholesaler purchases was to allow manufacturers, when dealing with covered entities, to continue their usual business practices. If a manufacturer has customarily dealt directly with a particular covered entity, *then requiring the continuation of this form of purchasing with the covered entity is reasonable. When dealing directly with a covered entity, manufacturers must offer covered outpatient drugs at or below the section 340B discount prices. If a manufacturer customarily uses a wholesaler as a means of distribution, then it may continue this practice. If the manufacturer's drugs are available to covered entities through wholesalers, the discount must be made available through that avenue.

Manufacturers may not single out covered entities from their other customers for restrictive conditions that would undermine the statutory objective. Manufacturers must not place limitations on the transactions (e.g., minimum purchase amounts) which would have the effect of discouraging entities from participating in the discount program.

(XI). Manufacturer's Contracts Requiring Entity Compliance

A manufacturer may not condition the offer of statutory discounts upon an entity's assurance of compliance with section 340B provisions. The enforcement of section 340B provisions is a Federal responsibility. Covered entity assurances regarding the following activities may not be required: (1) Eligibility to participate in the program; (2) utilization of covered outpatient drugs only in authorized services; (3) maintaining the confidentiality of the drug pricing information; (4) permitting the manufacturers to audit purchase, inventory, and related records prior to the publication of approved PHS guidelines; and (5) submitting information related to drug acquisition, purchase, and inventory systems. Entities are not required to sign agreements assuring manufacturers of their compliance with section 340B provisions. (If a manufacturer asks a covered entity whether the entity is in fact participating in the section 340B discount program, the entity must supply the manufacturer with this information).

Dated: December 21, 1993.

William A Robinson,
Acting Administrator, Health Resources and Services Administration.

[FR Doc. 93-31791 Filed 12-28-93; 8:45 am]

BILLING CODE 4180-15-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-93-3686; FR-3584-N-01]

Community Development Work Study Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability.

SUMMARY: This notice invites applications from institutions of higher education, area-wide planning organizations, and States for grants under the Community Development Work Study Program (CDWSP). The CDWSP, authorized by the Housing and Community Development Act of 1974, as amended, assists economically disadvantaged and minority students participating in work study programs in such institutions. This notice announces HUD's intention to award up to \$3 million from FY 1994 appropriations (plus any additional funds recaptured from prior appropriations) to fund work study programs to be carried out from August, 1994 to September, 1996.

DATES: Applications may be requested beginning on January 8, 1994. The application submission deadline date and time will be in the application kit.

FOR FURTHER INFORMATION CONTACT: James H. Turk, Technical Assistance Division, Office of Technical Assistance, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Telephone (202) 708-3176 (Voice). The TDD number for the hearing impaired is (202) 708-2564. These are not toll-free numbers. Application packages (requests for grant application) may be obtained by written request from the following address: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., room 7255, Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

A. Background

Section 107(c) of the Housing and Community Development Act of 1974, as amended, (the Act) authorizes the CDWSP. Under this section, HUD is authorized to provide grants to institutions of higher education, either directly or through area-wide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students,

including students with disabilities, who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community or economic development, community planning, or community management. Two-year institutions are not eligible applicants for funding under this program. This notice announces HUD's intention to award up to \$3 million from FY 1994 appropriations (plus any additional funds recaptured from prior appropriations). Awards will be made under the HUD implementing regulations at 24 CFR 570.400 and 570.415 and the provisions of this Notice.

B. Eligible Applicants

The following are eligible to apply for assistance under the program subject to the conditions noted below:

1. Institutions of higher education offering graduate degrees in a community development academic program.

2. Institutions of higher education offering undergraduate degrees in a community development academic program if no institutions of higher education in the standard metropolitan statistical area (SMSA) or non-SMSA area in which they are located offer graduate degrees in a community development academic program. (Note: Two-year institutions of higher education are not eligible applicants for funding under this program.)

3. Area-wide planning organizations (APOs) which apply on behalf of two or more institutions of higher education located in the same SMSA or non-SMSA area as the APO.

4. States which apply on behalf of two or more institutions of higher education located in the State. If a State is approved for funding, institutions of higher education located in the State are not eligible recipients. If an APO is approved for funding, institutions of higher education located in the SMSA or non-SMSA non-metropolitan area served by the APO are not eligible recipients.

C. Threshold Requirements

To be eligible for ranking, applications must meet each of the following threshold requirements:

1. The application must be filed in the application form prescribed by HUD, and within the required time prescribed by the Request For Grant Application (RFGA) released pursuant to this notice.

2. The application must demonstrate that the applicant is eligible to participate.

3. The applicant must demonstrate that each institution of higher education participating in the program as a recipient has the required academic programs and faculty to carry out its activities under CDWSP. Each work placement agency must have the required staff and community development work study program to carry out its activities under CDWSP.

4. Institutions of higher education, APOs, and States must maintain at least a 50 percent rate of graduation of students from the FY 1991 funding round which covered school years September 1991 to September 1993 in order to participate in the current round of CDWSP funding. Institutions of higher education, APOs, and States funded under the FY 1991 CDWSP funding round which did not maintain such a rate will be excluded from participating in the FY 1994 funding round. Such institutions, APOs, and States are eligible to participate in the 1995 round.

D. Selection Factors for Institutions of Higher Education (110 points)

The following factors will be considered by the Department in evaluating applications received from institutions of higher education in response to the solicitation.

1. Academic Program (53 points, as allocated below).

Each application will be reviewed for evidence of the school's commitment to administering a CDWSP and the overall strength of its commitment to meeting the needs of minority and economically disadvantaged individuals, including students with disabilities. This commitment will be evaluated in the following areas:

a. Relative quality of the academic program offered by the institution of higher education.

(1) Quality of the academic program in terms of community and economic development course offerings and academic requirements for students. (8 points)

(2) Appropriateness of the curriculum to prepare students for careers in the community and economic development field. (8 points)

(3) Qualifications of the faculty and the percentage of time they will teach in the academic area. (6 points)

b. Quality of academic supervision—Qualifications of the academic supervisor and the percentage of time they will commit to the students. (7 points)

c. Amount of resources to be committed by the institution to the academic program.

(1) Appropriateness and adequacy of the resources (facilities and equipment) that will be devoted to the academic area. (2 points)

(2) The degree to which the applicant is able to contribute funds to support the total cost of the project. (5 points)

(3) The degree to which the applicant will utilize faculty and staff administrators on staff. (7 points)

d. Rate of graduation—Applicant's success rate in graduating students previously enrolled in the HUD CDWSP or similar work study program. (10 points)

2. Student Work Placement Assignment (9 points, as allocated below)

a. The extent to which the participating students will receive a sufficient number and variety of work placement assignments. (3 points)

b. The extent to which the assignments will provide practical and useful experience to students participating in the program. (3 points)

c. The extent to which the assignments will further the participating students' preparation for professional careers in community or economic development, community planning, or community management. (3 points)

3. Seminars (4 points)

The degree to which the proposed seminars will (a) relate the experience provided under the work placement assignments with the educational experience provided under the academic programs and (b) address career planning and permanent job placement. (4 points)

4. Placement Opportunities (13 points, as allocated below)

a. Extent to which the institution's educational program (based on past experience) leads directly and immediately to career opportunities in the community and economic development fields. (6 points)

b. The applicant's success in assisting graduates of the HUD CDWSP or similar work study program to find permanent employment in community development funded agencies. (7 points)

5. Program Coordination and Administration (16 points, as allocated below)

a. The applicant's ability to track and monitor the progress of the students previously enrolled in the HUD or similar work study program, including the students who drop out of the program. (4 points)

b. The degree to which the Program Director has clear responsibility, ample percentage of time, and sufficient institutional or academic authority to

coordinate the overall administration of the program. (8 points)

c. The adequacy of the applicant's plan for placing students on rotating assignments in community development work placement assignments and keeping track of students during the two-year academic period and the internship. (4 points)

6. Institution's Commitment (15 points, as allocated below)

a. The extent to which the applicant has a recruitment program that demonstrates an active, aggressive, and imaginative effort to identify and attract qualified minorities and economically disadvantaged students, including students with disabilities. (2 points)

b. The success of past and current efforts in preparing these students for careers in community and economic development. (6 points)

c. The extent to which the CDWSP award will result in a net increase of these students in each academic area. (3 points)

d. The extent to which the CDWSP award will not result in a decrease in the amount of the institution's own financial support available for minority and economically disadvantaged students in the academic areas or the institution as a whole. (2 points)

e. The extent to which the applicant has provided reasonable accommodations for students with disabilities to enable them to participate in the college/university's academic and work-study programs. (2 points)

E. Selection Factors for Area-Wide Planning Organizations and States (110 points)

The following factors will be considered by the Department in evaluating applications received from area-wide planning organizations and States in response to this NOFA. Each application must contain sufficient technical information to be reviewed for its technical merit.

1. Academic Program (53 points, as allocated below)

a. Relative quality of the academic program offered by the institutions of higher education.

(1) Quality of the academic program in terms of community and economic development course offerings and academic requirements for students. (8 points)

(2) Appropriateness of the curriculum to prepare students for careers in the community and economic development field. (8 points)

(3) Qualifications of the faculty at each college/university listed in the submission and the percentage of time

they will teach in the academic area. (6 points)

b. Qualifications of the academic area supervisor at each college/university listed in the submission and the percentage of time they will commit to the students. (7 points)

c. The applicant's and institution's plan for the use of its facilities, equipment and financial resources in support of the CDWSP. (2 points)

d. The degree to which each college/university listed in the application is able to contribute funds to support the total cost of the project. (5 points)

e. The degree to which each college/university listed in the application will utilize faculty and staff administrators on staff. (7 points)

f. The success rate of each institution of higher education applying under the applicant in graduating students previously enrolled in the HUD CDWSP or similar work study program. (10 points)

2. Student Work Placement Assignment (9 points, as allocated below)

a. The extent to which the participating students will receive a sufficient number and variety of work placement assignments. (3 points)

b. The extent to which the assignments will provide practical and useful experience to students participating in the program. (3 points) and

c. The extent to which the assignments will further the participating students' preparation for professional careers in community or economic development, community planning, or community management. (3 points)

3. Seminars

The degree to which the proposed seminars will (a) relate to the experience provided under the work placement assignments with the educational experience provided under the academic program and (b) address career planning and permanent job placement. (4 points)

4. Placement Opportunities (13 points, as allocated below).

a. The extent to which the educational program for each college/university listed in the application (based on past experience) leads directly and immediately to career opportunities in the community and economic development fields. (6 points)

b. The applicant's success in assisting graduates of the HUD Community Development Work Study Program (CDWSP) or similar work study program to find permanent employment in community development funded agencies. (7 points)

5. Program Coordination and Administration (16 points, as allocated below)

a. The extent to which the applicant has established a committee to coordinate activities between program participants to advise the recipient on policy matters, to assist the recipient in ranking and selection of participating students, and to review disputes concerning compliance with program agreements and performance. (8 points)

b. The applicant's ability to track and monitor progress of students enrolled in the program and those who drop out. (4 points)

c. The adequacy of the applicant's plan for placing students in work placement assignments and keeping track of students during the two-year academic period and during the internship, respectively. (4 points)

6. Institution's Commitment (15 points, as allocated below)

a. The extent to which the applicant has a recruitment program that demonstrates an active, aggressive, and imaginative effort to identify and attract qualified minorities and economically disadvantaged students, including students with disabilities. (2 points)

b. The success of past and current efforts of colleges/universities listed in the application in preparing these students for careers in community and economic development. (6 points)

c. The extent to which the CDWSP award will result in a net increase of these students in each academic area. (3 points)

d. The extent to which the CDWSP award will not result in a decrease in the amount of the institutions' own financial support available for minority and economically disadvantaged students in the academic areas or the institution as a whole. (2 points)

e. The extent to which the applicant has provided reasonable accommodations for students with disabilities to enable them to participate in the college/university academic and work-study program. (2 points)

F. Program Policy Factors

HUD may provide assistance to support a number of students that is less than the number requested under applications in order to provide assistance to as many highly rated applications as possible. In addition, HUD might recommend a lower funding level than the requested amount for tuition, work stipend, books and additional support.

G. Obtaining Application

For an application kit, contact the Processing and Control Branch, Office of

Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7255, Washington, DC 20410.

Applications may be requested beginning on January 8, 1994. Requests for application kits must be in writing, but may be faxed to (202) 708-3363 (This is not a toll-free number). Please refer to FR-3584, and provide your name, address (including zip code) and telephone number (including area code).

H. Submitting Applications and Deadline Date

Applications for funding under this NOFA must be complete and must be physically received in the place designated in the application kit for receipt, by the deadline date and time specified in the application kit. The deadline date and time specified in the kit will be 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. The application submission deadline contained in the application kit will be no less than 60 days after the initial date on which application kits are made available to requestors.

Following the expiration of the application submission deadline, HUD will review and rank applications in a manner consistent with the procedures described in this Notice and the provisions of the program regulations at 24 CFR 570.425. Applicants awarded a CDWSP grant from FY 1994 appropriations will be notified approximately 40 days after the deadline date for applications set out in the application kit.

1. Application Content

Applicants must complete and submit applications in accordance with instructions contained in the application kit. The following is a checklist of the application content that will be specified in the RFGA:

- (a) Transmittal letter.
- (b) A completed and signed Standard Form 424, Application For Federal Assistance.
- (c) Abstract.
- (d) Table of Contents.
- (e) Proposal narrative statement addressing the factors for award.
- (f) Sample copy of student/recipient binding agreement.

- (g) Sample copy of recipient/student work placement agreement.
- (h) Management/Workplan Guidelines.
- (i) Resumes of Key staff and faculty.
- (j) Budget for resident and non-resident students.
- (k) Tuition and fee Schedule.
- (l) Audit/financial management system information.
- (m) Certification by IPA or cognizant audit agency of applicant's financial management system.
- (n) If applicable, document verifying a 50 per cent rate of graduation of students from the FY 1991 funding round.

2. Certifications and Exhibits

Applications must also include the following:

- (a) Drug-Free Workplace Certification.
- (b) Certification prohibiting excessive force against nonviolent civil rights demonstrators, pursuant to 42 U.S.C. 5304 (applies only to applicants that are units of general local government).
- (c) Certification on HUD Form 2880, Applicant/Recipient Disclosure, Update Report, disclosing receipt of at least \$200,000 in covered assistance during the fiscal year, pursuant to 24 CFR part 12, subpart C, Accountability in the Provision of HUD Assistance.
- (d) Disclosure of Lobbying Activities on SF-LLL must be used to disclose lobbying with other than Federally appropriated funds at the time of application if the applicant deems it applicable.

J. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to non-substantive deficiencies or errors. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

K. Other Matters

1. *Federalism Impact* The 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 notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order.

2. *Impact on the Family* The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice will likely have a beneficial impact on family formation, maintenance, and general well-being. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

3. 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 16, 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, public access, and disclosure requirements of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

a. Documentation and Public Access

HUD will ensure documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly Federal Register notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the *Federal Register* on January 16,

1992 (57 FR 1942), for further information on these requirements.)

b. HUD Responsibilities—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 part 12, subpart C, and the notice published in the *Federal Register* on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

c. State and Unit of General Local Government Responsibilities—Disclosures

States and units of general government receiving assistance under this NOFA must make all applicant disclosure reports available to the public for three years. Required update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years. Each State and unit of general local government may use HUD Form 2880 to collect the disclosures, or may develop its own form. (See 24 CFR part 12, subpart C, and the notice published in the *Federal Register* on January 16, 1992 (57 FR 1942) for further information on these disclosure requirements.)

4. Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the HUD Reform Act, 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 restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708-3815 (voice), (202) 708-1112

(TDD). These are not toll-free numbers. 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.

5. Prohibition Against Lobbying of HUD Personnel

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531 et seq.). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

HUD regulations implementing section 13 are at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the regulation, particularly the examples contained in appendix A of the rule.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410-3000. Telephone: (202) 708-3815 (voice), (202) 708-1112 (TDD). (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

6. 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) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding \$100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

7 The information collection requirements contained in this NOFA 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. 3501-3520) and assigned OMB control number 2506-0104.

8. The assistance under this NOFA is categorically excluded from review under the National Environmental Policy Act, pursuant to 24 CFR 50.20(b).

L. The Catalog of Federal Domestic Assistance program:

The Catalog of Federal Domestic Assistance Number is 14.234.

Authority: 42 U.S.C. 5301-5320; 42 U.S.C. 3535(d); 24 CFR 570.402.

Dated: December 21, 1993.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 93-31848 Filed 12-28-93; 8:45 am]

BILLING CODE 4210-29-P

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-93-3527; FR-3362-N-02]

Public and Indian Housing Drug Elimination Program; Announcement of Funding Awards for FY 1993

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for Public and Indian Housing Drug Elimination Program. This announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT:

Malcolm E. Main, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1197 or 708-3502. A telecommunication device for hearing or speech impaired persons (TDD) is available at (202) 708-0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to provide funds to Public and Indian Housing Drug Elimination Program for use in eliminating drug-related crime. This program is authorized under chapter 2, subtitle C, title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et seq.), and regulations at 24 CFR part 961. The Department published a Fiscal Year 1993 NOFA announcing the availability of \$145,525,000 for Drug Elimination.

The 1993 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on January 19, 1993 (58 FR 5150). Applications were scored and selected for funding based on criteria contained in the Notice.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing in the names, addresses, and the amount of funds awarded, as set out at the end of this Notice.

Dated: December 13, 1993.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS

[Fiscal Year 1993; Program name: Public and Indian Housing Drug Elimination Program (PHDEP); Statute: Public Law 100-690, November 18, 1988]

Funding recipient (name and address)	Amount approved
Housing Authority of the City of Hartford, 475 Flatbush Ave., Hartford, CT 06106-3728	\$516,000

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

[Fiscal Year 1993; Program name: Public and Indian Housing Drug Elimination Program (PHDEP); Statute: Public Law 100-690, November 18, 1988]

Funding recipient (name and address)	Amount approved
Housing Authority of the City of Ansonia, 75 Central Street, Ansonia, CT 06401-2042	134,500
Malden Housing Authority, P.O. Box 365, Malden, MA 02148-4361	250,000
Worcester Housing Authority, 40 Belmont St., Worcester, MA 01605-0000	250,000
Springfield Housing Authority, P.O. Box 1609, Springfield, MA 01101-1609	250,000
Boston Housing Authority, 52 Chauncey St., Boston, MA 02111-2302	1,941,750
New Bedford Housing Authority, P.O. Box A-2081, New Bedford, MA 02741-2081	316,696
Brockton Housing Authority, PO Box 340, Brockton, MA 02403	250,000
Cambridge Housing Authority, 270 Green St., Cambridge, MA 02139-3360	370,400
Somerville Housing Authority, 30 Memorial Rd., Somerville, MA 02145	218,500
Medford Housing Authority, 121 Riverside Ave., Medford, MA 02155	240,500
Gloucester Housing Authority, P.O. Box 1599, Gloucester, MA 01931-1599	50,000
Lawrence Housing Authority, 353 Elm Street, Lawrence, MA 01842	250,000
Lowell Housing Authority, P.O. Box 60, Lowell, MA 01853-60	333,800
Fall River Housing Authority, P.O. Box 989, Fall River, MA 02722-0989	356,600
Chelsea Housing Authority, 54 Locke Street, Chelsea, MA 02150-2209	175,000
Portland Housing Authority, 14 Baxter Blvd., Portland, ME 04101-4935	250,000
Nashua Housing Authority, 101 Major Drive, Nashua, NH 03060-4783	250,000
Manchester Housing & Redev. Authority, 198 Hanover St., Manchester, NH 03140	248,167
Providence Housing Authority, 100 Broad Street, Providence, RI 02903-4129	484,000
Newport Housing Authority, One Park Holm, Newport, RI 02840-1212	250,000
Pawtucket Housing Authority, P.O. Box 1303, Pawtucket, RI 02860-1303	211,000
Housing Authority of the City of Paterson, 160 Ward Street, Paterson, NJ 07505-1998	429,600
Housing Authority of Plainfield, 510 East Front St., Plainfield, NJ 07060-1443	234,500
Housing Authority of the City of Hoboken, 400 Harrison St., Hoboken, NJ 07030-6299	269,000
Housing Authority of the City of East Orange, 160 Halsted St., East Orange, NJ 07018-4228	226,000
Housing Authority of the City of Bayonne, 50 East 21 Street, Bayonne, NJ 07002-3761	276,800
Housing Authority of the City of Perth Amboy, 881 Amboy Ave., Perth Amboy, NJ 08862-1999	250,000
The Housing Authority of the City of Salem, 205 Seventh Street, Salem, NJ 08079-1040	129,000
Penns Grove Housing and Redevelopment Authority, Penn Tower South, Penns Grove, NJ 08069-1327	50,000
Housing Authority of the City of New Brunswick, P.O. Box 110, New Brunswick, NJ 08903-1368	250,000
Wildwood Housing Authority, 3700 New Jersey Ave., Wildwood, NJ 08260-7379	85,000
Jersey City Housing Authority, 400 US Highway 1, Jersey City, NJ 07306	751,400
Rahway Housing Authority, 165 East Grand Ave., Rahway, NJ 07065	138,500
Carteret Housing Authority, 96 Roosevelt Ave., Carteret, NJ 07008	126,000
Woodbridge Housing Authority, 10 Buns Lane, Woodbridge, NJ 07095	250,000
Edison Housing Authority, Willard/Dunham Drive, Edison, NJ 08837-3570	79,000
Housing Authority Township of Irvington, 624 Nye Ave., Irvington, NJ 07111	250,000
Elizabeth Housing Authority, 688 Maple Ave., Elizabeth, NJ 07202-	334,000
Bridgeton Housing Authority, 110 East Commerce St., Bridgeton, NJ 08302-	225,000
Camden Housing Authority, 517 Market Street, Camden, NJ 08101-	466,600
Newark Housing Authority, 57 Sussex St., Newark, NJ 07103-	1,600,000
Vineland Housing Authority, 191 Chestnut Ave., Vineland, NJ 08360-	250,000
Housing Authority of the Town of West New York, 6100 Adams Street, West New York, NJ 07093-1537	250,000
Trenton Housing Authority, P.O. Box 795, Trenton, NJ 08605-0795	390,000
Atlantic City Housing & Redevelopment Agency, P.O. Box 1258, Atlantic City, NJ 08404-7549	402,600
The Housing Authority of the City of Passaic, 333 Passaic Street, Passaic, NJ 07055-5896	250,000
Freeport Housing Authority, 3 Buffalo Ave., Freeport, NY 11520-4098	180,500
Long Beach Housing Authority, 500 Centre Street, Long Beach, NY 11561-2099	188,500
New Rochelle Municipal Housing Authority, 50 Sickles Ave., New Rochelle, NY 1801-4029	250,000
Village of Spring Valley Housing Authority, 76 Gesner Drive, Spring Valley, NY 10977-3998	70,110
Municipal Housing Authority for the City of Yonkers, P.O. Box 35, Yonkers, NY 10710-0035	510,200
Kingston Housing Authority, 202 Flatbush Ave., Kingston, NY 12401-2630	67,500
Newburgh Housing Authority, P.O. Box 89, Newburgh, NY 12550-3601	67,500
Monticello Housing Authority, 76 Evergreen Drive, Monticello, NY 12701-1630	50,000
Poughkeepsie Housing Authority, P.O. Box 630, Poughkeepsie, NY 12601-0632	180,000
Village of Hempstead Housing Authority, 75 Laurel Ave., Hempstead, NY 11550-5599	181,000
Peekskill Housing Authority, 807 Main Street, Peekskill, NY 10566-2028	141,000
Port Chester Housing Authority, P.O. Box 347, Port Chester, NY 10573-0347	160,000
Town of Hempstead Housing Authority, 760 Jerusalem Ave., Uniondale, NY 11553-2929	261,800
New York City Housing Authority, 250 Broadway, New York, NY 10007-2516	15,500,836
Troy Housing Authority, 1 Eddy's Lane, Troy, NY 12180-1498	282,400
Amsterdam Housing Authority, 52 Division St., Amsterdam, NY 12010-4002	132,500
Mechanicville Housing Authority, Harris Ave., Mechanicville, NY 12118-2210	80,000
Niagara Falls Housing Authority, 744 10th St., Niagara Falls, NY 14301-1852	249,972
Watervliet Housing Authority, 2400 Second Ave., Watervliet, NY 12189-2746	138,596
Municipal Housing Authority of Schenectady, 375 Broadway, Schenectady, NY 12305-2595	250,000
Cohoes Housing Authority, Jay McDonald Towers, Cohoes, NY 12047-2603	154,500
Buffalo Municipal Housing Authority, 300 Perry St., Buffalo, NY 14204-2299	999,200
Municipal Housing Authority of the City of Utica, 509 Second St., Utica, NY 13501-2450	250,000

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

(Fiscal Year 1993; Program name: Public and Indian Housing Drug Elimination Program (PHDEP); Statute: Public Law 100-690, November 18, 1988)

Funding recipient (name and address)	Amount approved
Rochester Housing Authority, 140 West Ave., Rochester, NY 14611-2744	488,514
Syracuse Municipal Housing Authority, 516 Burt St., Syracuse, NY 13202-3999	495,400
Binghamton Housing Authority, P.O. Box 1906, Binghamton, NY 13902-1906	250,000
Delaware State Housing Authority, 18 The Green, Dover, DE 19903-	164,515
Housing Authority of Frederick, 209 Madison Street, Frederick, MD 21701-	228,900
St. Michaels Housing Authority, P.O. Box 296, St. Michaels, MD 21663-	50,000
Housing Authority of the City of Rockville, 14 Moore Drive, Rockville, MD 20850-1230	82,500
Housing Opportunity Commission, Montgomery County, 10400 Detrick Avenue, Kensington, MD 20895-	266,200
Bucks County Housing Authority, P.O. Box 1329, Doylestown, PA 18901-0967	249,960
Chester Housing Authority, 6 West Sixth Street, Chester, PA 19016-4210	341,400
York Housing Authority, P.O. Box 1963, York, PA 17405-	250,000
Luzerne County Housing Authority, 250 First Avenue, Kingston, PA 18704-5815	259,932
Lancaster Housing Authority, 333 Church Street, Lancaster, PA 17602-4253	228,834
Chester County Housing Authority, 222 N. Church St., West Chester, PA 19380-2695	250,000
Franklin County Housing Authority, 202 Elder Avenue, Waynesboro, PA 17268-1224	158,180
Philadelphia Housing Authority, 2012 Chestnut Street, Philadelphia, PA 19103	3,317,900
Easton Housing Authority, P.O. Box 876, Easton, PA 18042-4441	202,481
Erie Housing Authority, 606 Holland Street, Erie, PA 16501-1285	336,490
Fayette County Housing Authority, P.O. Box 1007, Uniontown, PA 15401	334,800
Beaver County Housing Authority, 300 State Avenue, Beaver, PA 15009-1798	387,000
Westmoreland County Housing Authority, R.D. #6 Box 223, Greensburg, PA 15601-	366,600
Pittsburgh Housing Authority, 200 Ross St., Pittsburgh, PA 15219-2068	1,339,963
Washington County Housing Authority, 100 Crumrine Tower, Washington, PA 15301	216,536
Newport News Redevelopment & Housing Authority P.O. Box 77, Newport News, VA 23607-0077	457,800
Staunton Redevelopment & Housing Authority, P.O. Box 1369, Staunton, VA 24401-0831	75,000
Hampton Redevelopment & Housing Authority, P.O. Box 280, Hampton, VA 23669-0280	250,000
City of Roanoke Redevelopment & Hsg. Authority, P.O. Box 6359, Roanoke, VA 24017-0359	297,200
Suffolk Redevelopment & Housing Authority, P.O. Box 3079, Suffolk, VA 23434-3079	233,000
Petersburg Redevelopment & Housing Authority, P.O. Box 311, Petersburg, VA 23804-0311	245,996
Chesapeake Redevelopment & Housing Authority, P.O. Box 1304, Chesapeake, VA 23327-1304	201,000
Norfolk Redevelopment & Housing Authority, P.O. Box 968, Norfolk, VA 23501-0968	830,800
Franklin Redevelopment & Housing Authority, P.O. Box 267, Franklin, VA 23851-0267	112,500
Danville Redevelopment & Housing Authority, P.O. Box 2669, Danville, VA 24541-0669	249,995
Portsmouth Redevelopment & Housing Authority, P.O. Box 1098, Portsmouth, VA 237905-1098	381,200
Waynesboro Redevelopment & Housing Authority, P.O. Box 1138, Waynesboro, VA 22980-0821	82,015
Richmond Redevelopment & Housing Authority, P.O. Box 26887, Richmond, VA 23261-6887	750,250
Bristol Redevelopment & Housing Authority, 650 Quarry Street, Bristol, VA 24201-4390	240,500
Fairfax County, Redevelopment & Housing Authority, 3900 Pender Drive, Fairfax, VA 22030-7444	196,024
Alexandria Redevelopment & Housing Authority, 600 N Fairfax St, Alexandria, VA 22314-2094	250,000
Housing Authority of the City of Wheeling, P.O. Box 391, Wheeling, WV 26003-0050	248,140
Housing Authority of the City of Parkersburg, 1901 Cameron Avenue, Parkersburg, WV 26101-9316	69,500
Housing Authority of the City of Clarksburg, 916 W. Pike Street, Clarksburg, WV 26301-2250	163,000
Housing Authority of the City of Charleston, P.O. Box 86, Charleston, WV 25321-	314,000
Housing Authority of the City of Huntington, P.O. Box 2183, Huntington, WV 25722-2183	250,000
Housing Authority of the City of Alexander City, P.O. Box 788, Alexander City, AL 35010-0788	238,500
Anniston Housing Authority, P.O. Box 2225, Anniston, AL 36202-2225	250,000
Housing Authority of the Birmingham District, P.O. Box 55906, Birmingham, AL 35255-5906	1,021,800
Housing Authority of the City of Dothan, P.O. Box 1727, Dothan, AL 36302-1727	250,000
Greater Gadsden Housing Authority, P.O. Box 1219, Gadsden, AL 35902-1219	250,000
Housing Authority of the City of Decatur, P.O. Box 878, Decatur, AL 35602-	250,000
Mobile Housing Board, P.O. Box 1345, Mobile, AL 36633-1345	836,200
Housing Authority of the City of Huntsville, P.O. Box 486, Huntsville, AL 35804-0486	349,100
Housing Authority of the City of Montgomery, 1020 Bell St, Montgomery, AL 36104-3056	521,200
Housing Authority of the City of Foley, 302 Fourth Ave., Foley, AL 36535-	50,000
Housing Authority of the City of Jasper, P.O. Box 582, Jasper, AL 35501-0582	169,000
Jefferson County Housing Authority, 2100 Walker Chapel, Fultondale, AL 35068	250,000
Housing Authority of the City of Prichard, P.O. Box 10307, Prichard, AL 36610-	214,000
Housing Authority of the City of Jacksonville, 100 Roebuck Manor, Jacksonville, AL 36265	75,000
Northport Housing Authority, P.O. Drawer 359, Northport, AL 35476-0349	198,500
Housing Authority of the City of Ozark, P.O. Box 566, Ozark, AL 36361-0566	191,240
Selma Housing Authority, P.O. Box S, Selma, AL 36701	250,000
Washington County Housing Authority, P.O. Box 569, Chatom, AL 36518-	50,000
Housing Authority of the City of Tuskegee, 2901 Davison, St., Tuskegee Institute, AL 36088-	207,000
Sylacauga Housing Authority, P.O. Box 539, Sylacauga, AL 35150-	250,000
Housing Authority of the City of Roanoke, 209 Avenue A, Roanoke, AL 36274	50,000
Tuscaloosa Housing Authority, P.O. Box 2281, Tuscaloosa, AL 35403-2281	250,000
Housing Authority of the City of Eufaula, P.O. Box 36, Eufaula, AL 36027-0036	160,500
Hsg. Auth. of the City of Homestead, P.O. Box 278, Homestead, FL 33030-0278	250,000
Ocala Housing Authority, 1415 NE. 32nd Terr., Ocala, FL 34779-	158,500

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

[Fiscal Year 1993; Program name: Public and Indian Housing Drug Elimination Program (PHDEP); Statute: Public Law 100-690, November 18, 1988]

Funding recipient (name and address)	Amount approved
DeLand Housing Authority, 300 Sunflower Circle, DeLand, FL 32724-	99,500
Hsg. Auth. of the City of Ft. Myers, 4224 Michigan Avenue, Ft. Myers, FL 33916-	250,000
Housing Authority of the City of Orlando, 300 Reeves Court, Orlando, FL 32801-3199	340,600
Hsg. Auth. of the City of Key West, P.O. Box 2476, Key West, FL 33040-2476	250,000
Clearwater Housing Authority, P.O. Box 960, Clearwater, FL 33517-	177,290
Broward County Housing Authority, 1773 N. State Road 7, Lauderdale, FL 33313	244,569
Tampa Housing Authority, 1514 Union Street, Tampa, FL 33607-	987,200
Pasco County Housing Authority, 507 Acorn Circle, Dade City, FL 33525-	103,500
Housing Authority of Avon Park, P.O. Box 1327, Avon Park, FL 33825-	64,500
Hsg. Auth. of the County of Flagler, P.O. Box 188, Bunnell, FL 32110-0188	66,000
Hsg. Auth. of the City of St. Petersburg, P.O. Box 12849, St. Petersburg, FL 33733-2849	217,105
Boca Raton Housing Authority, 201 W. Palmetto Pk Rd., Boca Raton, FL 33432-	47,500
Hsg. Auth. of the City of Lakeland, P.O. Box 1009, Lakeland, FL 33802-1009	250,000
Pinellas County Housing Authority, 209 South Garden Ave., Clearwater, FL 34616-	208,526
Hialeah Housing Authority, 70 East 7th Street, Hialeah, FL 33010-4454	297,600
Housing Authority of Brevard County, P.O. Box 540338, Merritt Island, FL 32953-4645	250,000
Housing Authority of the City of Cocoa, P.O. Box 540338, Merritt Island, FL 32954-0338	218,000
Hsg. Auth. of the City of Titusville, P.O. Box 540338, Merritt Island, FL 32954-0338	126,000
West Palm Beach Housing Authority, 3801 Georgia Street, West Palm Beach, FL 33405-0247.	
Housing Authority of New Smyrna Beach, P.O. Box 688, New Smyrna Beach, FL 32170-0688	63,000
Alachua County Housing Authority, 636 N.E. First St., Gainesville, FL 32601-	158,000
Gainesville Housing Authority, P.O. Box 1468, Gainesville, FL 32602-	250,000
Melbourne Housing Authority, P.O. Box 540338, Merritt Island, FL 32954-0338	129,000
Housing Authority of the City of Daytona Beach, 118 Cedar Street, Daytona Beach, FL 32114-4904	250,000
Housing Authority of the City of Monroe, P.O. Box 550, Monroe, LA 70655-0550	191,000
Housing Authority of the City of Madison, P.O. Box 550, Monroe, LA 70655-0550	50,000
Housing Authority of the City of Loganville, P.O. Box 550, Monroe, LA 70655-0550	50,000
Housing Authority of the City of Macon, P.O. Box 4928, Macon, GA 31208-4928	425,000
Housing Authority of the City of Americus, 825 N. Mayo Street, Americus, GA 31709-2627	250,000
Housing Authority of the City of Athens, P.O. Box 1469, Athens, GA 30603-1469	254,000
Housing Authority of the City of Milledgeville, P.O. Box 112, Milledgeville, GA 31061-0112	50,000
Housing Authority of the City of Atlanta, 739 W. Peachtree, NE, Atlanta, GA 30365	1,067,651
Housing Authority of the City of Montezuma, P.O. Box 67, Montezuma, GA 31063-1724	82,000
Housing Authority of the City of Newton, P.O. Box 247, Camilla, GA 31730	50,000
Housing Authority of the City of Bremen, P.O. Box 776, Bremen, GA 30110-2160	50,000
Housing Authority of the City of Brunswick, P.O. Box 1118, Brunswick, GA 31521-1118	250,000
Housing Authority of the City of Pelham, P.O. Box 269, Pelham, GA 31779-0269	105,000
Housing Authority of the City of Camilla, P.O. Box 247, Camilla, GA 31730-0247	229,000
Housing Authority of the City of Rome, P.O. Box 1428, Rome, GA 30161-2737	250,000
Housing Authority of the City of Royston, P.O. Box 86, Royston, GA 30662-0066	92,471
Housing Authority of the City of Savannah, P.O. Box 1179, Savannah, GA 31402-1179	535,396
Housing Authority of the City of Social Circle, P.O. Box 550, Monroe, GA 30655-0550	50,000
Housing Authority of the City of Warner Robins, P.O. Box 2048, Warner Robins, GA 31099-2048	202,000
Housing Authority of the City of Canton, 1 Shipp Street, Canton, GA 30114-2813	76,000
Housing Authority of the City of Waycross, P.O. Box 1407, Waycross, GA 31502-1407	250,000
Housing Authority of the City of Winder, P.O. Box 505, Winder, GA 30680-0505	137,600
Housing Authority of the City of Carrollton, P.O. Box 627, Carrollton, GA 30117-0627	139,400
Housing Authority of the City of Cedartown, P.O. Box 211, Cedartown, GA 30125-0211	146,409
Housing Authority of the City of Columbus, P.O. Box 630, Columbus, GA 31993	425,600
Housing Authority of the City of Covington, P.O. Box 1367, Covington, GA 30209-1367	140,000
Housing Authority of the City of Eastman, P.O. Box 100, Eastman, GA 31023-0100	109,000
Housing Authority of the City of Douglas, P.O. Box 917, Douglas, GA 31533-	205,000
Housing Authority of the County of Fulton, 10 Park Place, S.E., Atlanta, GA 30303	250,000
Housing Authority of the City of Gainesville, P.O. Box 653 Gainesville, GA 30503-0653	248,000
Housing Authority of the City of Hartwell, 500 W. Franklin Pl., Hartwell, GA 30643-0745	89,500
Housing Authority of the City of Calhoun, 111-F South Fair St., Calhoun, GA 30701-2369	125,000
Housing Authority of the City of Augusta, P.O. Box 3246, Augusta, GA 30901	554,800
Housing Authority of Covington, 2940 Madison Ave., Covington, KY 41015-	247,310
Housing Authority of Lexington, 635 Ballard Street, Lexington, KY 40508	332,400
Housing Authority of Paducah, 2330 Ohio St., Paducah, KY 42003-	250,000
Housing Authority of Richmond, P.O. Box 447, Richmond, KY 40475-	167,500
Housing Authority of Morgantown, P.O. Box 628, Morgantown, KY 42261-	89,200
Housing Authority of Georgetown, 139 Scroggin Park, Georgetown, KY 40324	163,484
City of Albermarle, Dept. of Housing, P.O. Drawer 1367, Albermarle, NC 28002	100,000
Burlington Housing Authority, P.O. Box 2380, Burlington, NC 27216-	183,998
City of Concord, Dept. of Housing, P.O. Box 308, Concord, NC 28025-	76,000
Housing Authority of the City of Durham, P.O. Box 1726, Durham, NC 28025-	419,800
Housing Authority of the City of Goldsboro, P.O. Box 1403, Goldsboro, NC 27533-	250,000
Greensboro Housing Authority, P.O. Box 21287, Greensboro, NC 27420	477,000

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

[Fiscal Year 1993; Program name: Public and Indian Housing Drug Elimination Program (PHDEP); Statute: Public Law 100-690, November 18, 1988]

Funding recipient (name and address)	Amount approved
Greenville Housing Authority, P.O. Box 1426, Greenville, NC 27835-1426	250,000
City of Hickory Public Housing Authority, P.O. Box 2927, Hickory, NC 28603	139,500
Housing Authority of the City of High Point, P.O. Box 1779, High Point, NC 27261	269,600
Laurinburg Housing Authority, P.O. Box 1437, Laurinburg, NC 28352	235,550
Lincolnton Housing Authority, P.O. Box 753, Lincolnton, NC 28092	115,560
Maxton Housing Authority, P.O. Box 126, Maxton, NC 28364	50,000
Morgantown Housing Authority, P.O. Box 1053, Morgantown, NC 28655	125,000
Housing Authority of the City of Raleigh, P.O. Box 28007, Raleigh, NC 27611	407,400
Housing Authority of the City of Rocky Mount, P.O. Box 4717, Rocky Mount, NC 27803	244,000
Rowan County Housing Authority, 121 W. Council St., Salisbury, NC 28144	100,000
Housing Authority of the City of Salisbury, P.O. Box 159, Salisbury, NC 28145-	250,000
Sanford Housing Authority, P.O. Box 636, Sanford, NC 27331	232,500
Selma Housing Authority, 711 Lizzie St., Selma, NC 27576	91,500
Smithfield Housing Authority, P.O. Box 1058, Smithfield, NC 27577	102,500
Statesville Housing Authority, P.O. Box 187, Statesville, NC 28677	230,500
Thomasville Housing Authority, 201 James Ave., Thomasville, NC 27360-2426	130,000
Washington Housing Authority, P.O. Box 1046, Washington, NC 27889	191,500
Williamston Housing Authority, P.O. Box 709, Williamston, NC 27892	74,919
Housing Authority of the City of Wilmington, P.O. Box 899, Wilmington, NC 28402	347,989
Housing Authority of the City of Wilson, P.O. Box 3876, Wilson, NC 27895-	186,089
Housing Authority of the City of Winston-Salem, 901 Cleveland Ave., Winston-Salem, NC 27101	427,000
Puerto Rico Public Housing Administration, P.O. Box 363188, Rio Piedras, PR 00936-3188	6,000,000
Housing Authority of the City of Rock Hill, P.O. Box 11579, Rock Hill, SC 29730-1579	62,000
Housing Authority of the City of York, P.O. Box 687, York, SC 29745-0687	62,000
Knoxville's Community Development Corporation, P.O. Box 3550, Knoxville, TN 37927	799,000
The Town of Crossville Housing Authority, P.O. Box 425, Crossville, TN 38557-	145,500
Maryville Housing Authority, 100 Broadway Towers, Maryville, TN 37803-0428	198,500
Cleveland Housing Authority, P.O. Box 2846, Cleveland, TN 37311-2846	216,490
Kingsport Housing Authority, P.O. Box 44, Kingsport, TN 37662-0044	216,200
Chattanooga Housing Authority, P.O. Box 1486, Chattanooga, TN 37401-1148	730,027
Metropolitan Development & Housing Agency, P.O. Box 846, Nashville, TN 37202-0846	947,700
Pulaski Housing Authority, P.O. Box 1058, Pulaski, TN 38478-1058	121,000
Poarch Band of Creek Indians of Alabama, HCR 69A Box 85B, Atmore, AL 36502-	50,000
Seminole Tribe of Florida, 6073 Stirling Road, Hollywood, FL 33024-	216,931
Madison County Housing Authority, 1609 Olive Street, Collinsville, IL 62234	250,000
Waukegan Housing Authority, 200 S. Utica Street, Waukegan, IL 60085-	50,000
Morgan County Housing Authority, 301 W. Beecher, Jacksonville, IL 62650	50,000
Alton Housing Authority, P.O. Box 967, Alton, IL 62002-0967	143,756
Rockford Housing Authority, 330 Fifteenth Avenue, Rockford, IL 61108	422,400
Randolph County Housing Authority, 214 Opdyke Street, Chester, IL 62233	110,500
Cook County Housing Authority, 59 E. Van Buren St., Chicago, IL 60605-	436,400
Decatur Housing Authority, 1808 East Locust St., Decatur, IL 62521-1409	250,000
Kankakee County Housing Authority, P.O. Box 1289, Kankakee, IL 60901-1289	177,300
LaSalle County Housing Authority, P.O. Box 782, Ottawa, IL 61350-0782	200,000
Marion County Housing Authority, 719 E. Howard Street, Centralia, IL 62801	179,250
St. Claire County Housing Authority, 100 N. Forty-Eighth, Belleville, IL 62223	250,000
Champaign County Housing Authority, P.O. Box 183, Urbana, IL 61801-0183	250,000
Housing Authority of East St. Louis, 700 N. Twentieth St., East St. Louis, IL 62205	476,400
Union County Housing Authority, P.O. Box 317, Anna, IL 62906-0317	172,876
Chicago Housing Authority, 22 W. Madison Street, Chicago, IL 60602	5,950,650
Hammond Housing Authority, 7329 Columbia Circle, Hammond, IN 46324-2819	113,150
Evansville Housing Authority, P.O. Box 3605, Evansville, IN 47735-	249,971
Michigan City Housing Authority, P.O. Box 416, Michigan City, IN 46360-0416	182,500
East Chicago Housing Authority, P.O. Box 498, East Chicago, IN 46312-0498	250,000
Indianapolis Housing Authority, 410 N. Meridian St., Indianapolis, IN 46204-1790	543,000
Fort Wayne Housing Authority, 2013 S. Anthony, Fort Wayne, IN 46809-3489	250,000
Pleasant Point Passamaquoddy Reserv. Housing Auth., P.O. Box 339, Perry, ME 04667-	65,500
Port Huron Housing Commission, 905 Seventh Street, Port Huron, MI 48060-5399	220,000
Ecorse Housing Commission, 266 Hyacinth Street, Ecorse, MI 48229-1699	100,000
Flint Housing Commission, 3820 Richfield Road, Flint, MI 48506-2616	250,000
Mount Clemens Housing Commission, 50 Church Street, Mt. Clemens, MI 48043-2253	144,000
Saginaw Housing Commission, 2811 Davenport St., Saginaw, MI 48602-3747	250,000
Royal Oak Township Housing Commission, 21312 Wyoming Ave., Ferndale, MI 48220-2125	64,000
Ypsilanti Housing Commission, 601 Armstrong Drive, Ypsilanti, MI 48197-5224	109,000
Detroit Housing Department, 2211 Orleans, Detroit, MI 48207-2780	1,276,350
Pontiac Housing Commission, 132 Franklin Blvd., Pontiac, MI 48341	250,000
Saginaw Chippewa Housing Authority, 2451 Nishnabeanon, Mt. Pleasant, MI 48858-	50,000
Sault Ste Marie Tribe of Chippewa Indians, 2218 Shunk Road, Sault Ste Marie, MI 49783-	136,500
Minneapolis PHA in and for the City of Minneapolis, 1001 Washington Ave, Minneapolis, MN 55401	1,001,290

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

[Fiscal Year 1993; Program name: Public and Indian Housing Drug Elimination Program (PHDEP); Statute: Public Law 100-690, November 18, 1988]

Funding recipient (name and address)	Amount approved
Public Housing Agency of the City of Saint Paul, 413 Wacouta Street, St. Paul, MN 55101	851,000
Housing & Redevelopment Authority of Rochester, 2116 Campus Drive SE, Rochester, MN 55904-4744	50,000
Housing & Redevelopment Authority of Winona, 165 East Fourth St., Winona, MN 55987-3514	139,100
Housing & Redevelopment Authority of Duluth, P.O. Box 16900, Duluth, MN 55816-0900	208,368
Red Lake Indian Reservation Housing Authority, P.O. Box 219, Red Lake, MN 56671-	238,000
Mille Lacs Indian Housing Authority, HCR 67 Box 194, Onamia, MN 56359-	50,000
White Earth Reservation Tribal Council, P.O. Box 418, White Earth, MN 56591-	174,500
Choctaw Housing Authority, P.O. Box 6088, Philadelphia, MS 39350-	246,511
Qualla Housing Authority, P.O. Box 1749, Cherokee, NC 28719-	250,000
Cincinnati Metropolitan Housing Authority, 16 W. Central Pkwy, Cincinnati, OH 45210-1991	1 143,398
Dayton Metropolitan Housing Authority, 400 Wayne Avenue, Dayton, OH 45410-1106	901,100
Lucas Metropolitan Housing Authority, P.O. Box 477, Toledo, OH 43692-0477	656,400
Trumbull Metropolitan Housing Authority, 1977 Niles Road, Warren, OH 44484-5197	247,295
Stark Metropolitan Housing Authority, 1800 W. Tuscarawas, Canton, OH 44708-4997	480,087
Jefferson Metropolitan Housing Authority, 815 N. Sixth Avenue, Steubenville, OH 43952-1847	149,526
Cambridge Metropolitan Housing Authority, P.O. Box 744, Cambridge, OH 43725-0744	50,000
Chillicothe Metropolitan Housing Authority, 178 West Fourth St., Chillicothe, OH 45601	168,500
Zanesville Metropolitan Housing Authority, 2746 Maple Ave., Zanesville, OH 43701	250,000
Allen Metropolitan Housing Authority, 600 S. Main, Lima, OH 45804	93,500
Milwaukee Housing Authority, P.O. Box 324, Milwaukee, WI 53201	950,800
Madison Comm. Develop. Authority, P.O. Box 1785, Madison, WI 53701-1785	250,000
Bad River Band of Lake Superior Chippewa, P.O. Box 57, Odanah, WI 54861-	79,500
Menominee Tribal Housing Authority, P.O. Box 459, Keshena, WI 54315-0459	228,000
Oneida Housing Authority, P.O. Box 68, Oneida, WI 54155-	130,500
Housing Authority of the City of North Little Rock, Box 516, North Little Rock, AR 72115-0516	250,000
Housing Authority of the City of Brinkley, 501 West Cedar St., Brinkley, AR 72021-2713	67,000
Housing Authority of the City of Arkadelphia, 670 S. 6th Street, Arkadelphia, AR 71923	50,000
Housing Authority of the City of Warren, Box 602, Warren, AR 71671-0602	85,500
Housing Authority of the City of Texarkana, 110 Bramble Courts, Texarkana, AR 75502	201,500
Housing Authority of the City of Little Rock, 1000 Wolfe St., Little Rock, AR 72202-	330,200
Housing Authority of the City of England, 102 Benefield, England, AR 72046-0214	60,500
Kickapoo Housing Authority of Kansas, Rt. 1, Box 800A, Horton, KS 66439	50,000
Sac & Fox Hous. Auth./MO, Rt. 1, Box 97, Unit 12, Reserve, KS 66434-	45,000
Housing Authority of East Baton Rouge Parish, 4546 North St., Baton Rouge, LA 70806-3422	230,000
Housing Authority of DeRidder, P.O. Box 387, DeRidder, LA 70634-0387	50,000
Housing Authority of Shreveport, 625 Jordan Street, Shreveport, LA 71101-	238,000
Housing Authority of Sulphur, P.O. Box 271, Sulphur, LA 70664-0271	106,000
Housing Authority of Monroe, P.O. Box 1194, Monroe, LA 71201-1194	304,400
Housing Authority of Morgan City, P.O. Box 2393, Morgan City, LA 70381-	164,300
Housing Authority of St. James Parish, P.O. Box 280, Litcher, LA 70001-0280	159,000
Housing Authority of the City of Natchitoches, P.O. Box 754, Natchitoches, LA 71457-0754	179,560
Housing Authority of St. John the Baptist Parish, P.O. Box 1599, Laplace, LA 70069-1599	158,000
Housing Authority of the City of Santa Fe, P.O. Box 4039, Santa Fe, NM 87502-4039	230,500
Housing Authority of the City of T or C, 108 South Cedar St., Truth or Consequences, NM 87901	50,000
Housing Authority of the Town of Bernalillo, P.O. Box 70, Bernalillo, NM 87004-0070	50,000
Housing Authority of the County of Santa Fe, 52 Camino De Jacobo, Santa Fe, NM 87501	110,000
Housing Authority of the City of Las Cruces, 926 South San Pedro, Las Cruces, NM 88001-	143,500
Housing Authority of the City of Tulsa, P.O. Box 6369, Tulsa, OK 74148-0369	531,400
Housing Authority of the City of McAlester, P.O. Box 819, McAlester, OK 74501-0819	137,000
Housing Authority of the City of Hugo, P.O. Box 727, Hugo, OK 74743-0727	96,135
Housing Authority of the City of Idabel, P.O. Box 838, Idabel, OK 74745-0838	100,000
Housing Authority of the City of Lawton, 620 E. Ave., Lawton, OK 73501-4501	159,500
Oklahoma City Housing Authority, 1700 NE Fourth St., Oklahoma City, OK 73117	628,400
Housing Authority of the City of Langston, P.O. Box 90, Langston, OK 73050-0090	50,000
Kaw Tribe, P.O. Box 371, Newkirk, OH 74647	50,000
Absentee Shawnee Tribe, P.O. Box 425, Shawnee, OK 74801	250,000
Cherokee Nation, P.O. Box 1007, Tahlequah, OK 74464	519,814
Choctaw Nation, P.O. Box G, Hugo, OK 74743	479,200
Kiowa IHA, P.O. Box 847, Anadarko, OK 73005	161,500
Seneca-Cayuga Tribe, P.O. Box 1304, Miami, OK 74354	194,000
Sac & Fox Tribe of OK, P.O. Box 1252, Shawnee, OK 74801	198,500
Housing Authority of Wichita Falls, P.O. Box 544, Wichita Falls, TX 76307-0544	250,000
Housing Authority of Corsicana, P.O. Box 1090, Corsicana, TX 75151-1090	131,500
Housing Authority of Sherman, P.O. Box 2147, Sherman, TX 75091-2147	150,000
Housing Authority of Slaton, P.O. Box 317, Slaton, TX 79364-0317	50,000
Housing Authority of Fort Worth, P.O. Box 430, Fort Worth, TX 76101-0430	250,000
Housing Authority of New Boston, P.O. Box 806, New Boston, TX 75570-0806	45,241
Housing Authority of Denison, P.O. Box 447, Denison, TX 75021-0447	100,000
Housing Authority of Texarkana, P.O. Box 5766, Texarkana, TX 75501-5766	250,000

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

[Fiscal Year 1993; Program name: Public and Indian Housing Drug Elimination Program (PHDEP); Statute: Public Law 100-690, November 18, 1988]

Funding recipient (name and address)	Amount approved
Housing Authority of Plano, 1581 Ave K, Plano, TX 75074-6231	50,000
Housing Authority of El Paso, P.O. Box 9895, El Paso, TX 79989-9895	940,350
Housing Authority of Lubbock, P.O. Box 2568, Lubbock, TX 79408-2568	250,000
Housing Authority of Abilene, P.O. Box 60, Abilene, TX 79604-0060	106,471
Housing Authority of Temple, P.O. Box 634, Temple, TX 76504-0634	162,650
Housing Authority of Dallas, P.O. Box 191485, Dallas, TX 75212-0000	1,023,300
Housing Authority of the City of Bay City, 3012 Sycamore, Bay City, TX 77414	50,000
Housing Authority of the City of Orange, P.O. Box 3107, Orange, TX 77631-3107	195,667
Housing Authority of the City of Port Arthur, P.O. Box 2295, Port Arthur, TX 77643-2295	174,530
Housing Authority of the City of Texas City, 817 2nd Ave. North, Texas City, TX 77590	65,000
Housing Authority of the City of Houston, P.O. Box 2971, Houston, TX 77252-2971	805,400
Austin Housing Authority, P.O. Box 6159, Austin, TX 78762-6159	381,800
Brownsville Housing Authority, P.O. Box 4420, Brownsville, TX 78520-4420	250,000
Edinburg Housing Authority, P.O. Box 295, Edinburg, TX 78540-0295	233,995
Harlingen Housing Authority, P.O. Box 1669, Harlingen, TX 78551-1669	250,000
Kingsville Housing Authority, P.O. Box 847, Kingsville, TX 78363	99,000
La Joya Housing Authority, P.O. Box 1409, La Joya, TX 78560-1409	50,000
Laredo Housing Authority, 2000 San Francisco, Laredo, TX 78040	250,000
Luling Housing Authority, P.O. Box 229, Luling, TX 78648-0229	63,603
Mercedes Housing Authority, P.O. Box 985, Mercedes, TX 78570-0985	155,942
Mission Housing Authority, 906 E. 8th Street, Mission, TX 78572	91,070
Pharr Housing Authority, 211 West Audrey, Pharr, TX 78577-	182,500
San Antonio Housing Authority, P.O. Drawer 1300, San Antonio, TX 78295-1300	1,176,988
San Benito Housing Authority, P.O. Box 1950, San Benito, TX 78586-1950	165,000
Bastrop Housing Authority, P.O. Box 707, Bastrop, TX 78602-0707	50,000
McAllen Housing Authority, 2301 Jasmine Avenue, McAllen, TX 78501	75,000
Starr Co. Housing Authority, P.O. Box 50, Rio Grande City, TX 78582-0050	50,000
Low Rent Housing Agency of Clinton, P.O. Box 2958, Clinton, IA 52733-2958	50,000
Iowa City Housing Authority, 410 E. Washington St., Iowa City, IA 52240-1826	50,000
Southern Iowa Regional Housing Authority, 219 N. Pine St., Creston, IA 50801-2413	59,575
North Iowa Regional Housing Authority, 217 2nd St., Mason City, IA 50401-	53,500
Des Moines Public Housing Authority, 1101 Crocker St., Des Moines, IA 50309-1110	250,000
Kansas City, Kansas Housing Authority, 1124 North Ninth, Kansas City, KS 66101-2197	424,000
Topeka Housing Authority, 1312 Polk, Topeka, KS 66612-	250,000
Housing Authority of Atchison, 7th & Mall, Atchison, KS 66002-2882	95,000
Housing Authority of Kansas City, 299 Paseo, Kansas City, MO 64106-2608	403,400
Housing Authority of Springfield, 421 W. Madison St., Springfield, MO 65806-2931	249,810
Housing Authority of the City of Columbia, 1201 Paquin #1, Columbia, MO 65201-5053	250,000
Saint Louis Housing Authority, 4100 Lindell Blvd., St. Louis, MO 63108-2999	1,015,350
Housing Authority of the City of Jefferson, P.O. Box 1029, Jefferson City, MO 65101-1029	179,500
Housing Authority of Saint Louis County, P.O. Box 23886, St. Louis, MO 63121-0580	48,150
Housing Authority of the City of Fulton, P.O. Box 814, Fulton, MO 65251-0814	89,000
Housing Authority of the City of Kinloch, 5662 MLK Blvd., Kinloch, MO 63140-1597	102,000
Omaha Housing Authority, 540 South 27 St., Omaha, NE 68105-1521	575,000
Denver Housing Authority, P.O. Box 4305, Denver, CO 80204	783,800
Billings Housing Authority, 2415 1st Avenue N., Billings, MT 59101	39,714
Helena Housing Authority, 812 Abbey Street, Helena, MT 59601	180,000
Chippewa Cree, P.O. Box 615, Box Elder, MT 59521	146,000
Fort Peck, PO Box 667, Poplar, MT 29255	250,000
Fort Berthold, Box 310, New Town, ND 58763-	250,000
Standing Rock, PO Box 484, Ft Yates, SD 58538-	245,200
Rosebud, PO Box 69, Rosebud, SD 57570	241,728
Salt Lake County Housing Authority, 1962 S. 200 E., Salt Lake City, UT 84115	250,000
Chandler Housing and Redevelopment Division, 99 N. Delaware St., Chandler, AZ 85225-	100,000
City of Phoenix Housing Department, 830 E. Jefferson St., Phoenix, AZ 85034-2298	480,200
City of Tucson, Community Services Department, Box 27210, Tucson, AZ 85726-7210	264,600
Housing Authority of the City of Yuma, 1350 W. Colorado St., Yuma, AZ 85364-	92,500
Pinal County Housing Department, 970 N. 11 Mile Rd., Casa Grande, AZ 85222-9621	46,900
Nogales Housing Authority, 951 W. Kitchen St., Nogales, AZ 85628-0777	93,000
City & County of San Francisco Housing Authority, 440 Turk St., San Francisco, CA 94102-	973,550
Oakland Housing Authority, 1619 Harrison Street, Oakland, CA 94612-	660,098
Housing Authority of the City of Fresno, P.O. Box 11985, Fresno, CA 93776-1985	250,000
Housing Authority of the County of Fresno, P.O. Box 11985, Fresno, CA 93776-1985	250,000
Housing Authority of the County of Stanislaus, P.O. Box 3958, Modesto, CA 95352-3958	249,925
Housing Authority of the County of Monterey, 123 Rico Street, Salinas, CA 93907-	195,210
Housing Authority of the County of Marin, P.O. Box 4282, San Rafael, CA 94913-4282	183,700
Housing Authority of the County of Contra Costa, P.O. Box 2759, Martinez, CA 94553	250,000
Housing Authority of the County of Merced, 405 "U" Street, Merced, CA 95340	227,000
Housing Authority of the City of Oxnard, 1470 Colonia Road, Oxnard, CA 93030-3714	249,998

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

[Fiscal Year 1993; Program name: Public and Indian Housing Drug Elimination Program (PHDEP); Statute: Public Law 100-690, November 18, 1988]

Funding recipient (name and address)	Amount approved
Housing Authority of the City of Santa Barbara, 808 Laguna Street, Santa Barbara, CA 93101-1590	237,300
San Diego Housing Commission, 1625 Newton Avenue, San Diego, CA 92113	250,000
Housing Authority of the City of Calexico, 1006 East Fifth St., Calexico, CA 92231	151,000
Housing Authority of the County of Kern, 525 Roberts Lane, Bakersfield, CA 93308-4799	250,000
Housing Authority of the City of Los Angeles, P.O. Box 17157, Los Angeles, CA 90017-1295	1,324,350
Community Development Commission, County of L.A., 2525 Corporate Place, Monterey Park, CA 91754	565,600
Sacramento City Housing & Redevelopment Agency, P.O. Box 1834, Sacramento, CA 95812-1834	250,000
Sacramento County Housing & Redevelopment Agency, P.O. Box 1834, Sacramento, CA 95812-1834	250,000
Housing Authority of the City of San Joaquin, P.O. Box 447, Stockton, CA 95201	250,000
Karuk Tribe Housing Authority, 1320 Yellowhammer, Yreka, CA 96097	49,500
Housing Authority of the County of Clark, 5064 East Flamingo R, Las Vegas, NV 89122	249,070
Housing Authority of the City of Las Vegas, P.O. Box 1897, Las Vegas, NV 89125	524,800
Housing Authority of the City of Reno, 1525 East Ninth St., Reno, NV 89512-3012	250,000
Housing Authority of the City of North Las Vegas, 1632 Yale Street, North Las Vegas, NV 89030-6827	125,500
Alaska Housing Finance Corporation, P.O. Box 230329, Anchorage, AK 99523-0329	249,686
Housing Authority of the County of Clackamas, 13930 S. Gain Street, Oregon City, OR 97045	223,986
Housing Authority of Portland, 135 SW Ash Street, Portland, OR 97204	537,200
HA of the City of Pasco and Franklin County, P.O. Box 687, Pasco, WA 99301-0687	138,700
King County Housing Authority, 15455 65th Ave. S., Seattle, WA 98188-2583	622,800
Housing Authority of the City of Seattle, 120 6th Ave. N., Seattle, WA 98109	980,850
Housing Authority of Snohomish County, 3425 Broadway, Everett, WA 98201-5095	99,500
Housing Authority of the City of Tacoma, 1728 E. 44th St., Tacoma, WA 98404-4699	291,400
Housing Authority of the City of Yakima, 110 Fair Avenue, Yakima, WA 98901-3072	75,000
Makah Housing Authority, P.O. Box 888, Neah Bay, WA 98357-0088	95,500

[FR Doc. 93-31653 Filed 12-28-93; 8:45 am]
BILLING CODE 4210-33-P

[Docket No. N-93-3405; FR-3158-N-03]

Public and Indian Housing Drug Elimination Program, Announcement of Funding Awards for FY 1992**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.**ACTION:** Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for Public and Indian Housing Drug Elimination Program. This announcement contains the names and

addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT:

Malcolm E. Main, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1197 or 708-3502. A telecommunication device for hearing or speech impaired persons (TDD) is available at (202) 708-0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

The purpose of the competition was to provide funds to Public and Indian Housing Drug Elimination Program for use in eliminating drug-related crime. This program is authorized under chapter 2, subtitle C, title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et. seq.*), and regulations at 24

CFR part 961. The Department published a Fiscal Year 1992 NOFA announcing the availability of \$140,550,000 for Drug Elimination.

The 1992 awards announced in this Notice were selected for funding in a competition announced in a *Federal Register* Notice published on April 30, 1992 (57 FR 18774) and an extension Notice published on May 22, 1992 (57 FR 21819). Applications were scored and selected for funding based on criteria contained in the Notice.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing the names, addresses, and the amount of funds awarded, as set out at the end of this Notice.

Dated: December 13, 1993.

Michael B. Janis,
General Deputy Assistant Secretary for Public and Indian Housing.

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS

[Fiscal Year 1992; Program Name: Public and Indian Housing Drug Elimination Program (PHDEP); Statute: Public Law 100-690, November 18, 1988]

Funding recipient (name and address)	Amount approved
New London Housing Authority, 186 Coleman Street, New London, CT 06320-	\$50,000
Town of Greenwich Housing Authority, P.O. Box 141, Greenwich, CT 06836-6620	91,478
City of New Britain Housing Authority, 34 Marimac Road, New Britain, CT 06053-2699	250,000
State of Connecticut Department of Housing, P.O. Box 786, Hartford, CT 06103	250,000
City of New Haven Housing Authority, P.O. Box 1912, New Haven, CT 06509	704,400
Town of Stratford Housing Authority, P.O. Box 344, Stratford, CT 06497-6911	148,500

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

[Fiscal Year 1992; Program Name: Public and Indian Housing Drug Elimination Program (PHDEP); Statute: Public Law 100-690, November 18, 1988]

Funding recipient (name and address)	Amount approved
Bridgeport Housing Authority, P.O. Box 2344, Bridgeport, CT 06608	438,200
City of Lawrence Housing Authority, 353 Elm Street, Lawrence, MA 01842	250,000
City of New Bedford Housing Authority, P.O. Box 2081, New Bedford, MA 02741-2081	250,000
City of Fall River Housing Authority, P.O. Box 989, Fall River, MA 02722-0989	248,800
City of Springfield Housing Authority, P.O. Box 1609, Springfield, MA 01101-1609	250,000
City of Brockton Housing Authority, P.O. Box 340, Brockton, MA 02403	250,000
City of Cambridge Housing Authority, 270 Green Street, Cambridge, MA 02139-3360	370,400
City of Boston Housing Authority, 52 Chauncy Street, Boston, MA 02111-2302	1,949,400
City of Lynn Housing Authority, 174 Common Street, Lynn, MA 01905-2513	233,000
Lowell Housing Authority, P.O. Box 3063, Lowell, MA 01853	250,000
City of Gloucester Housing Authority, P.O. Box 1599, Gloucester, MA 01931-1599	45,300
City of Woburn Housing Authority, 59 Campbell Street, Woburn, MA 01801	50,000
City of Chelsea Housing Authority, 54 Locke Street, Chelsea, MA 02150-2209	175,000
City of Portland Housing Authority, 14 Baxter Boulevard, Portland, ME 04101-4935	250,000
City of Nashua Housing Authority, 101 Major Drive, Nashua, NH 03060-4783	250,000
City of Dover Housing Authority, 62 Whittier Street, Dover, NH 03820-2994	214,245
City of Providence Housing Authority, 100 Broad Street, Providence, RI 02904	298,265
City of Bayonne Housing Authority, 50 E. 21st Street, Bayonne, NJ 07002-3761	275,694
City of Passaic Housing Authority, 333 Passaic Street, Passaic, NJ 07055	250,000
City of East Orange Housing Authority, 160 Halstead Street, East Orange, NJ 07018-4228	226,000
City of Paterson Housing Authority, 160 Ward Street, Paterson, NJ 07509	429,600
City of Camden Housing Authority, 422 Dudley Street, Camden, NJ 08105-1465	466,600
City of North Bergen Housing Authority, 6121 Grand Avenue, North Bergen, NJ 07047-5436	250,000
City of Trenton Housing Authority, P.O. Box 795, Trenton, NJ 08605-0795	390,000
City of Newark Housing Authority, 57 Sussex Avenue, Newark, NJ 07103-3992	1,603,350
Atlantic City Housing and Redevelopment Authority, P.O. Box 1258, Atlantic City, NJ 08404-7549	333,094
Jersey City Housing Authority, 400 US Highway 1, Jersey City, NJ 07306-0000	724,400
City of Long Branch Housing Authority, P.O. Box 336, Long Branch, NJ 07740-0336	250,000
City of New Brunswick Housing Authority, 176 Memorial Parkway, New Brunswick, NJ 08903-1368	250,000
City of Elizabeth Housing Authority, 688 Maple Avenue, Elizabeth, NJ 07202-2690	334,000
City of Woodbridge Housing Authority, 10 Bunns Lake, Woodbridge, NJ 07095-1799	250,000
City of Salem Housing Authority, 205 Seventh Street, Salem, NJ 08079-1040	129,000
City of Rahway Housing Authority, 165 E. Grand Avenue, Rahway, NJ 07065-5491	126,500
City of Asbury Park Housing Authority, 1000 1/2 Third Ave., Asbury Park, NJ 07712-3847	250,000
City of Vineland Housing Authority, 191 Chestnut Avenue, Vineland, NJ 08360-5417	250,000
City of Hoboken Housing Authority, 400 Harrison Street, Hoboken, NJ 07030	245,440
City of Bridgeton Housing Authority, 110 E. Commerce Street, Bridgeton, NJ 08302-2606	36,800
Edison Housing Authority, Willard Dunham Dr., Edison, NJ 08837-3570	80,000
Glassboro Housing Authority, 737 Lincoln Blvd., Gloucester County, NJ 08028-	50,000
City of Plainfield Housing Authority, 510 E. Front Street, Plainfield, NJ 07060-1443	234,500
City of Schenectady Municipal Housing Authority, 375 Broadway Schenectady, NY 12305-2595	250,000
City of Buffalo Municipal Housing Authority 901 City Hall Buffalo, NY 14202	750,750
City of Albany Housing Authority, 4 Lincoln Square, Albany, NY 12202-1637	347,600
City of Syracuse Housing Authority 516 Burt Street Syracuse, NY 13202-3999	495,500
City of Binghamton Housing Authority, P.O. Box 1906, Binghamton, NY 13902-1906	250,000
City of Niagara Falls Housing Authority, 744 10th Street, Niagara Falls, NY 14301-1852	250,000
City of Rochester Housing Authority, 140 West Avenue, Rochester, NY 14611-2744	492,304
City of Utica Housing Authority, 509 Second Street, Utica, NY 13501-2450	250,000
City of Troy Housing Authority, 1 Eddy's Lane, Troy, NY 12180-1498	253,800
City of Watervliet Housing Authority, 2400 Second Avenue, Watervliet, NY 12189-2746	149,647
Village of Hempstead Housing Authority, 75 Laurel Avenue, Hempstead, NY 11550-5599	130,240
City of New York Housing Authority, 250 Broadway, New York, NY 10007	15,035,363
City of Long Beach Housing Authority, 500 Centre Street, Long Beach, NY 11561-2015	146,861
City of Freeport Housing Authority, 3 Buffalo Avenue, Freeport, NY 11520-4098	180,500
City of Greenburgh Housing Authority, 9 Maple Street, White Plains, NY 10603	57,500
Town of Hempstead Housing Authority, 75 Laurel Avenue, Hempstead, NY 11550-5599	130,240
City of New Rochelle Housing Authority, 50 Sickles Avenue, New Rochelle, NY 10801-4029	261,800
City of Peekskill Housing Authority, 807 Main Street, Peekskill, NY 10566-2028	141,000
City of White Plains Housing Authority, 223 Grove Street White Plains, NY 10601-4199	249,977
City of Yonkers Housing Authority, P.O. Box 35, Yonkers, NY 10710-0035	481,800
City of Port Chester Housing Authority, P.O. Box 347, Port Chester, NY 10573-5202	153,666
Town of Islip Housing Authority, 963 Montauk Highway, Oakdale, NY 11769-1494	176,000
City of Poughkeepsie Housing Authority, 221 Smith Street, Poughkeepsie, NY 12601-0632	175,000
Newburgh, HA, 40 Walsh Rd., Newburgh, NY 12550-	67,500
Amsterdam, HA, 52 Division St., Amsterdam, NY 12010-	132,500
District of Columbia Housing Authority, 1133 Capitol St. NE, Washington, DC 20002	1,776,904
Delaware State Housing Authority, 18 The Green, Dover, DE 19903	55,508
City of Wilmington Housing Authority, 400 Walnut, Wilmington, DE 19801	514,531
City of Baltimore Housing Authority, 417 E. Lafayette St., Baltimore, MD 21202	2,697,831

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

[Fiscal Year 1992; Program Name: Public and Indian Housing Drug Elimination Program (PHDEP); Statute: Public Law 100-690, November 18, 1988]

Funding recipient (name and address)	Amount approved
City of Frederick Housing Authority, 209 Madison Street, Frederick, MD 21701	228,000
St. Michael's Housing Authority, P.O. Box 296, St. Michael's, MD 21663	50,000
City of Annapolis Housing Authority, P.O. Box 296, St. Michael's, MD 21663	50,000
City of Annapolis Housing Authority, 1217 Madison Street, Annapolis, MD 21403	250,000
City of Cumberland Housing Authority, 635 E. First Street, Cumberland, MD 21502	214,450
Montgomery County Housing Opportunities Agency, 10400 Detrick Avenue, Kensington, MD 20895	266,700
City of Wilkes-Barre Housing Authority, Lincoln Plaza, Wilkes-Barre, PA 18702	250,000
Lawrence County Housing Authority, P.O. Box 988, New Castle, PA 16103	250,000
Beaver County Housing Authority, 300 State Street, Beaver, PA 15009-1798	387,000
Fayette County Housing Authority, P.O. Box 1007, Uniontown, PA 15401	175,438
Lycoming County Housing Authority, 400 Lycoming Street, Williamsburg, PA 17701-4976	163,062
City of Reading Housing Authority, 400 Hancock Blvd., Reading, PA 19611	322,000
Lackawanna County Housing Authority, 2019 W. Pine Street, Dunmore, PA 18512-0079	247,900
City of Lancaster Housing Authority, 333 Church Street, Lancaster, PA 17602-4253	245,846
Washington County Housing Authority, #100 Crumrine Tower, Washington, PA 15301	249,054
City of Montgomery Housing Authority, 55 E. Marshall Str. Norristown, PA 19401-4866	250,000
City of Bethlehem Housing Authority, 645 Main Street, Bethlehem, PA 18018-3845	250,000
City of York Housing Authority, P.O. Box 1963, York, PA 17405	250,000
City of Harrisburg Housing Authority, 351 Chestnut Street, Harrisburg, PA 17105-9713	245,200
City of Allentown Housing Authority, 1339 Allen Street, Allentown, PA 18102-2143	249,396
City of Bristol Redevelopment Housing Authority, 650 Quarry Street, Bristol, VA 24201-4390	244,000
City of Danville Redevelopment Housing Authority, P.O. Box 2669, Danville, VA 24541-0669	250,000
Alexandria Redevelopment & Housing Authority, 600 North Fairfax St., Alexandria, VA 22314	250,000
Cumberland Plateau Regional Housing Authority, P.O. Box 1328, Lebanon, VA 24266-1328	154,000
City of Portsmouth Housing Authority, P.O. Box 1098, Portsmouth, VA 23705-1098	381,000
Hampton Redevelopment Housing Authority, P.O. Box 280, Hampton, VA 23669-0280	250,000
Fairfax County Redevelopment & Housing Auth, 1 University Plaza, Fairfax, VA 22030-4423	250,000
City of Norfolk Housing Authority, P.O. Box 968, Norfolk, VA 23501-0968	816,800
City of Hopewell Redevelopment Housing Authority, P.O. Box 1361, Hopewell, VA 23860-1361	199,890
Newport News Redevelopment Housing Authority, P.O. Box 77, Newport News, VA 23607-0077	453,800
City of Richmond Redevelopment Housing Authority, P.O. 26887, Richmond, VA 23261-6887	700,697
City of Suffolk Housing Authority, P.O. Box 1858, Suffolk, VA 23434	50,000
Housing Authority of the City of Bluefield, P.O. Box 1475, Bluefield, WV 24701	69,935
Housing Authority of the City of Fairmont, 517 Fairmont Avenue, Fairmont, WV 26544	68,500
Parkersburg Housing Authority, 1901 Cameron Ave., Parkersburg, WV 26101	70,000
City of Florence Housing Authority, 303 N. Pine Street, Florence, AL 35630-5493	249,825
City of Greenville Housing Authority, P.O. Box 521, Greenville, AL 36037-0521	99,000
City of Gadsden Housing Authority, P.O. Box 1219, Gadsden, AL 35902-1219	250,000
City of Tuscaloosa Housing Authority, P.O. Box 2281, Tuscaloosa, AL 35403-2281	250,000
City of Northport Housing Authority, P.O. Box Drawer 349, Northport, AL 35476-0349	198,500
City of Eufaula Housing Authority, P.O. Box 36, Eufaula, AL 36027-0036	160,500
City of Bessemer Housing Authority, 1100 5th Avenue 'N', Bessemer, AL 35020	250,000
Jefferson County Housing Authority, 2100 Walker Chapel, Fultondale, AL 35068	250,000
City of Decatur Housing Authority, P.O. 878, Decatur, AL 35602-0878	250,000
City of Huntsville Housing Authority, P.O. Box 486, Huntsville, AL 35804-0486	350,600
City of Jacksonville Housing Authority, 100 Roebuck Manor, Jacksonville, AL 36265	75,000
City of Mobile Housing Authority, P.O. Box 1345, Mobile, AL 36633-1345	836,200
City of Foley Housing Authority, 302 Fourth Avenue, Foley AL 36535	50,000
City of Montgomery Housing Authority, 1020 Bell Street, Montgomery, AL 36197-3501	520,200
Alexander City Housing Authority, P.O. Drawer 788, Alexander City, AL 35010-0788	236,050
City of Enterprise Housing Authority, Nell Court Office, Enterprise, AL 36330	74,000
City of Dothan Housing Authority, P.O. Box 1727, Dothan, AL 36302-1727	250,000
City of Auburn Housing Authority, P.O. Box 1912, Auburn, AL 36830-1912	160,000
Housing Authority of the City of Roanoke, 209 Avenue 'A', Roanoke, AL 36274	50,000
City of Piedmont Housing Authority, P.O. Box 420, Piedmont, AL 36272-0420	105,000
City of Ozark Housing Authority, P.O. Box 566, Ozark, AL 36361-0566	216,500
City of Prichard Housing Authority, P.O. Box 10307, Prichard, AL 36610-0307	214,000
The Housing Authority of the City of Uniontown, 104 Plumbee Street, Uniontown, AL 36786	50,000
City of Lineville Housing Authority, P.O. Box 455, Lineville, AL 36266-0455	50,000
Phenix City Housing Authority, P.O. Box 338, Phenix City, AL 36868-0338	250,000
City of Sylacaugh Housing Authority, P.O. Box 539, Sylacauga, AL 35150-0539	250,000
City of Tuskegee Housing Authority, 2901 Davidson Street, Tuskegee Institute, AL 36088	250,000
City of Clearwater Housing Authority, P.O. Box 960, Clearwater, FL 33517-0960	245,002
City of Key West Housing Authority, P.O. Box 2476, Key West, FL 33040-2476	250,000
Broward County Housing Authority, 1773 N. State Road 7, Lauderhill, FL 33313	220,304
City of Hialeah Housing Authority, 70 East 7th Street, Hialeah, FL 33010-4465	240,000
City of Sarasota Housing Authority, 1300 Sixth Street, Sarasota, FL 34236	250,000
City of Lakeland Housing Authority, P.O. Box 1009, Lakeland, FL 33802	250,000
Palm Beach County Housing Authority, 3432 W. 45th Street, West Palm Beach, FL 33407-1897	246,369

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

(Fiscal Year 1992; Program Name: Public and Indian Housing Drug Elimination Program (PHDEP); Statute: Public Law 100-690, November 18, 1988)

Funding recipient (name and address)	Amount approved
City of Deerfield Beach Housing Authority, 425 N.W. 1st Terrace, Deerfield Beach, FL 33441	98,000
City of Daytona Beach Housing Authority, 118 Cedar Street, Daytona Beach, FL 32014-4904	250,000
City of Palatka Housing Authority, 400 N. 15th Street, Palatka, FL 32077	236,795
Dade County Department of HUD, P.O. Box 350250, Miami, FL 33125	1,639,111
City of Ft. Myers Housing Authority, 4224 Michigan Ave., Fort Meyers, FL 33916	250,000
City of Pensacola Housing Authority, P.O. Box 18370, Pensacola, FL 32523-8370	250,000
City of Orlando Housing Authority, 300 Reeves Court, Orlando, FL 32801-3199	340,600
City of Gainesville Housing Authority, P.O. Box 1468, Gainesville, FL 32602-1468	250,000
City of Alachua County Housing Authority, 636 N. E. First Str., Gainesville, FL 32601-5398	141,000
City of DeLand Housing Authority, 300 Sunflower Circle, DeLand, FL 32724-5999	99,500
Housing Authority for the County of Flagler, 414 S. Bacher Street, Bunnell, FL 32110-	60,000
City of Sanford Housing Authority, P.O. Box 2359, Sanford, FL 32772-2359	227,733
City of Boca Raton Housing Authority, 201 W. Palmetto Pk., Boca Raton, FL 33432	47,500
City of Ft. Walton Beach Housing Authority, 27 Robinwood Dr. SW, Fort Walton Beach, FL 32548-5394	86,201
City of Macon Housing Authority, P.O. Box 4928, Macon, GA 31208-4928	420,200
City of Savannah Housing Authority, P.O. Box 1179, Savannah, GA 31402-1179	535,325
City of Augusta Housing Authority, P.O. Box 3246, Augusta, GA 30901	554,800
City of Calhoun Housing Authority, 111-F South Fair St., Calhoun, GA 30701-2369	125,000
County of DeKalb Housing Authority, P.O. Box 1627, Decatur, GA 30031-1627	250,000
City of Brunswick Housing Authority, P.O. Box 1118, Brunswick, GA 31521-1118	250,000
City of Decatur Housing Authority, P.O. Box 1627, Decatur, GA 30031-1627	141,000
Housing Authority of the City of Canton, 1 Shipp Road, Canton, GA 30114-	76,000
Housing Authority of the City of Logansville, P.O. Box 550, Monroe, GA 30655-	50,000
City of Atlanta Housing Authority, 739 W. Peachtree, NE, Atlanta, GA 30365	2,179,500
City of Carrollton Housing Authority, P.O. Box 627, Carrollton, GA 30117-0627	81,382
City of Lawrenceville Housing Authority, 502 Glenn Edge Drive, Lawrenceville, GA 30245	106,000
City of Cordele Housing Authority, 401 South 10th St., Cordele, GA 31015-2301	237,500
City of Dublin Housing Authority, P.O. Box 36, Dublin, GA 31040	250,000
The Housing Authority of the City of Madison, P.O. Box 550, Monroe, GA 30655-	50,000
Housing Authority of the City of Montezuma, P.O. Box 67, Montezuma, GA 31063-	82,000
City of College Park Housing Authority, 1908 West Princeton, College Park, GA 30337-2814	210,420
City of Columbus Housing Authority, P.O. Box 630, Columbus, GA 31993	425,600
City of Covington Housing Authority, P.O. Box 1367, Covington, GA 30209-1367	140,000
City of Moultrie Housing Authority, P.O. Box 1048, Moultrie, GA 31768	206,500
City of Camilla Housing Authority, P.O. Box 247, Camilla, GA 31730-0247	65,280
City of East Point Housing Authority, P.O. Box 90788, East Point, GA 30344-2560	241,500
Housing Authority of the City of Bremen, Haralson County, Bremen, GA 30110-	50,000
City of Jesup Housing Authority, P.O. Box 396, Jesup, GA 31545-3001	107,000
County Fulton Housing Authority, 10 Park Place, S.E., Atlanta, GA 30303	250,000
City of Albany Housing Authority, P.O. Box 485, Albany, GA 31702-0485	245,300
City of Bainbridge Housing Authority, P.O. Box 304, Bainbridge, GA 31717-0304	148,500
City of Monroe Housing Authority, P.O. Box 550, Monroe, GA 30655-0550	191,500
City of Warner Robins Housing Authority, P.O. Box 2048, Warner Robins, GA 31099-2048	222,000
City of Lexington and Fayette Housing Authority, 635 Ballard Street, Lexington, KY 40508	332,400
City of Danville Housing Authority, P.O. Box 666, Danville, KY 40422-0666	107,930
City of Louisville Housing Authority, 420 South Eighth St., Louisville, KY 40203	717,495
City of Bowling Green Housing Authority, P.O. Box 116, Bowling Green, KY 42102-0116	250,000
Housing Authority of Georgetown, 139 Scroggin Park, Georgetown, KY 40324-	163,693
City of Covington Housing Authority, 2940 Madison Avenue, Covington, KY 41015	249,985
Housing Authority of Todd County, P.O. Box 68, Guthrie, KY 42234-	48,590
City of Tupelo Housing Authority, P.O. Box 3, Tupelo, MS 38802-0003	198,700
City of Meridian Housing Authority, P.O. Box 870, Meridian, MS 39302-0870	254,400
Mississippi Southern Region VIII Housing Agency, P.O. Box 2347, Gulfport, MS 29505-2347	359,600
City of Water Valley Housing Authority, HH-1 Blackmur Drive, Water Valley, MS 38965	99,500
The Housing Authority of the City of Lumberton, P.O. Box 192, Lumberton, MS 39455-	46,940
City of Greensboro Housing Authority, P.O. Box 21287, Greensboro, NC 27420	477,000
City of Fayetteville Housing Authority, P.O. Box 2349, Fayetteville, NC 28302	226,000
City of Raleigh Housing Authority, P.O. Box 28007, Raleigh, NC 27611	410,699
City of Greenville Housing Authority, P.O. Box 1426, Greenville, NC 27835-1426	250,000
City of High Point Housing Authority, P.O. Box 1779, High Point, NC 27261	269,600
Housing Department of the City of Concord, P.O. Box 308, Concord, NC 28025-0308	76,000
City of Kinston Housing Authority, P.O. Box 697, Kinston, NC 28501	250,000
City of Durham Housing Authority, P.O. Box 1726, Durham, NC 27702	419,800
City of Salisbury Housing Authority, P.O. Box 159, Salisbury, NC 28145-0159	250,000
City of Wilmington Housing Authority, P.O. Box 899, Wilmington, NC 28402	250,000
City of Asheville Housing Authority, P.O. Box 1898, Asheville, NC 28802	312,400
City of Statesville Housing Authority, 433 S. Meeting St., Statesville, NC 28677-0187	230,500
City of Washington Housing Authority, P.O. Box 1046, Washington, NC 27889-1046	191,500
Town of Laurinburg Housing Authority, P.O. Box 1437, Laurinburg, NC 28352-1437	236,000

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

[Fiscal Year 1992; Program Name: Public and Indian Housing Drug Elimination Program (PHDEP); Statute: Public Law 100-690, November 18, 1988]

Funding recipient (name and address)	Amount approved
City of Goldsboro Housing Authority, 1729 Edgerton Street, Goldsboro, NC 27533-1403	230,260
City of New Bern Housing Authority, P.O. Box 1486, New Bern, NC 28560	210,487
City of Winston-Salem Housing Authority, 920 Mock Street, Winston-Salem, NC 27127-	426,800
City of Hendersonville Housing Authority, P.O. Box 1106, Hendersonville, NC 28739-1106	193,664
City of Charlotte Housing Authority, P.O. Box 36795, Charlotte, NC 28236	766,292
City of Rocky Mount Housing Authority, P.O. Box 4717, Rocky Mount, NC 27803	249,342
Ayden Housing Authority, P.O. Box 482, Ayden, NC 28513-	87,497
Williamston Housing Authority, P.O. Box 709, Williamston, NC 27892-	73,819
City of Burlington Housing Authority, P.O. Box 2380, Burlington, NC 27216-2380	183,908
City of Lumberton Housing Authority, P.O. Box Drawer 709, Lumberton, NC 28359	250,000
Rowan County Housing Authority, 121 W. Council St., Salisbury, NC 28144	100,000
Town of Chapel Hill Department of Housing and Community Development, 317 Caldwell St. Ext., Chapel Hill, NC 27516-	51,000
City of Monroe Housing Authority, P.O. Box 805, Monroe, NC 28110-0805	103,000
Plymouth Housing Authority, 306 West Water Street, Plymouth, NC 27962-	94,500
City of Charleston Housing Authority, 20 Franklin Street, Charleston, SC 29401-1954	249,511
City of Florence Housing Authority, P.O. Box Drawer 969, Florence, SC 29503	168,558
City of York Housing Authority, P.O. Box 687, York, SC 29745-0687	62,000
City of Beaufort Housing Authority, P.O. Box 1104, Beaufort, SC 29901-1104	130,000
City of North Charleston Housing Authority, P.O. Box 10387, North Charleston, SC 29411	239,224
Greenwood Housing Authority, P.O. Box 973, Greenwood, SC 29648-0973	50,000
City of Anderson Housing Authority, 1335 East River St., Anderson, SC 29621	119,500
Housing Authority of Fort Mill, 105 Bozeman Dr., Fort Mill, SC 29715-	61,000
Nashville Metropolitan Development & Housing Agency, P.O. Box 846, Nashville, TN 37202-0846	947,850
City of Franklin Housing Authority, P.O. Box 304, Franklin, TN 37064-0304	153,380
City of Dyersburg Housing Authority, P.O. Box 824, Dyersburg, TN 38025-0824	238,950
Knoxville Community Development Corporation, P.O. Box 3550, Knoxville, TN 37927	806,200
City of Jackson Housing Authority, P.O. Box 3188, Jackson, TN 38301-3188	250,000
City of Clarksville Housing Authority, P.O. Box 603, Clarksville, TN 37041-0603	235,280
City of Kingsport Housing Authority, P.O. Box 44, Kingsport, TN 37662-0044	250,000
City of Chattanooga Housing Authority, P.O. Box 1486, Chattanooga, TN 37401-1148	735,600
City of McMinnville Housing Authority, 301 Hardaway Street, McMinnville, TN 37110	201,988
City of Brownsville Housing Authority, P.O. Box 194, Brownsville, TN 38012-0194	81,500
City of Columbia Housing Authority, P.O. Box 115, Columbia, TN 38401-0115	120,317
Poarch Band of Creek Housing Authority, HCR 69A, Box 858, Atmore, AL 36502-	50,000
Seminole Tribal IHA, 3101 NW 63rd Avenue, Hollywood, FL 33024	217,988
City of East St. Louis Housing Authority, 700 N. Twentieth St., East St. Louis, IL 62205	522,958
City of Chicago Housing Authority, 22 W. Madison Street, Chicago, IL 60602	5,827,100
City of Decatur Housing Authority, 1808 East Locust St., Decatur, IL 62521-1409	246,000
Champaign County Housing Authority, P.O. Box 183, Urbana, IL 61801-0183	243,045
City of Rock Island Housing Authority, 111 Twentieth Street, Rock Island, IL 61201-8827	250,000
City of Danville Housing Authority, P.O. Box 312, Danville, IL 61834-0312	250,000
Madison County Housing Authority, 1609 Olive Street, Collinsville, IL 62234	250,000
City of Rockford Housing Authority, 330 Fifteenth Avenue, Rockford, IL 61108	341,600
City of Joliet Housing Authority, P.O. Box 2519, Joliet, IL 60434-2519	250,000
Cook County Housing Authority, 59 E. Van Buren St., Chicago, IL 60605	436,400
City of Freeport Housing Authority, 10 North Galena, Freeport, IL 61032-4302	123,370
St. Clair County Housing Authority, 100 N. Forty-Eighth, Belleville, IL 62223	243,700
City of Bloomington Housing Authority, Wood Hill Towers, Bloomington, IL 61701-6768	250,000
Marion County Housing Authority, 719 E. Howard Street, Centralia, IL 62801	223,000
Franklin County Housing Authority, P.O. Box 68, West Frankfort, IL 62896-0068	227,101
City of Fort Wayne Housing Authority, P.O. Box 13489, Fort Wayne, IN 46802	250,000
City of Gary Housing Authority, 578 Broadway Street, Gary, IN 46402-1986	435,565
City of South Bend Housing Authority, P.O. Box 11057, South Bend, IN 46634-0057	250,000
City of Evansville Housing Authority, P.O. Box 3605, Evansville, IN 47735	240,590
City of Indianapolis Housing Authority, 410 N. Meridian St., Indianapolis, IN 46204-1790	468,075
City of Elkhart Housing Authority, 1396 Benham Avenue, Elkhart, IN 46516-2505	231,128
City of East Chicago Housing Authority, P.O. Box 498, East Chicago, IN 46312-0498	243,045
City of Flint Housing Commission, 3820 Richfield Road, Flint, MI 48506-2616	250,000
City of Benton Harbor Housing Commission, 925 Buss Street, Benton Harbor, MI 49022	179,000
Ypsilanti Housing Commission, 601 Armstrong Drive, Ypsilanti, MI 48197-	109,000
City of Inkster Housing Commission, 2000 Inkster Road, Inkster, MI 48141-1871	250,000
City of Port Huron Housing Commission, 905 Seventh Street, Port Huron, MI 48060-5399	220,000
City of Lansing Housing Commission, 310 Seymour Avenue, Lansing, MI 48933	250,000
Sault Sainte Marie Tribal IHA, 2218 Shunk Road, Sault Ste. Marie, MI 49783	136,500
City of St. Paul Housing Authority, 413 Wacouta Street, St. Paul, MN 55101	846,800
Red Lake Tribal IHA, P.O. Box 219, Hwy 1, Red Lake Falls, MN 56671-0219	226,834
White Earth Tribal IHA, P.O. Box 436, White Earth, MN 56591-0436	158,687
Fond Du Lac Tribal IHA, 105 University Ave., Cloquet, MN 55720	146,500
Bois Forte Housing Authority, P.O. Box 12, Nett Lake, MN 55772	50,000

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

[Fiscal Year 1992; Program Name: Public and Indian Housing Drug Elimination Program (PHDEP); Statute: Public Law 100-690, November 18, 1988]

Funding recipient (name and address)	Amount approved
North Carolina State Tribal IHA, P.O. Box 2343, Fayetteville, MN 28302-2343	116,920
Cuyahoga Metropolitan Housing Authority, 1441 W. 25th Street, Cleveland, OH 44113-3101	1,758,750
Dayton Metropolitan Housing Authority, 400 Wayne Avenue, Dayton, OH 45410	857,800
Lucas Metropolitan Housing Authority, P.O. Box 477, Toledo, OH 43692-0477	657,986
Akron Metropolitan Housing Authority, 180 West Cedar St., Akron, OH 44307-2546	751,349
Zanesville Metropolitan Housing Authority, 2746 Maple Avenue, Zanesville, OH 43701	250,000
Portsmouth Metropolitan Housing Authority, 410 Court Street, Portsmouth, OH 45662	249,888
Jefferson Metropolitan Housing Authority, 815 N. Sixth Avenue, Steubenville, OH 43952-1847	235,928
Stark Metropolitan Housing Authority, 1800 W. Tuscarawas, Canton, OH 44708-4997	480,189
Springfield Metropolitan Housing Authority, 437 East John Street, Springfield, OH 45505	110,000
City of Superior Housing Authority, 1219 N. Eighth Str., Superior, WI 54880	217,500
City of Milwaukee Housing Authority, P.O. Box 324, Milwaukee, WI 53201-0324	943,400
Madison Community Development Housing Authority, P.O. Box 1785, Madison, WI 53701	240,000
Oneida Tribe of Wisconsin IHA, P.O. Box 68, Oneida, WI 54155-0068	124,193
Lac Courte Oreilles Tribal IHA, Rural Route 2, Hayward, WI 54843-0002	201,200
Menominee Housing Authority, P.O. Box 476, Keshena, WI 54135-0476	198,293
City of Conway Housing Authority, 360 CHA Street, Conway, AR 72032	77,000
DeWitt Housing Authority, P.O. Box 447, DeWitt, AR 72042	50,000
City of Forrest Housing Authority, P.O. Box 997, Forrest City, AR 72335-0997	225,000
City of Hope Housing Authority, 720 Texas Street, Hope, AR 71801-6399	94,000
City of Malvern Housing Authority, P.O. Box 550, Malvern, AR 72104-0550	78,600
City of North Little Rock Housing Authority, P.O. Box 516, North Little Rock, AR 72115-0516	250,000
Polk County Housing Authority, Mena, AR 71953	71,146
City of Searcy Housing Authority, 501 S. First Street, Searcy, AR 72143	67,878
City of Texarkana Housing Authority, 110 Bramble Courts, Texarkana, AR 75502	173,176
City of East Baton Rouge Housing Authority, 4546 North Street, Baton Rouge, LA 70806	250,000
City of Houma Housing Authority, 332 W. Park Avenue, Houma, LA 70364-4267	119,600
City of Lake Charles Housing Authority, P.O. Box 1206, Lake Charles, LA 70602-1206	166,015
City of Monroe Housing Authority, P.O. Box 1194, Monroe, LA 71201-1194	304,400
City of New Orleans Housing Authority, 918 Carondelet St., New Orleans, LA 70130	1,955,089
Dequincy Housing Authority, 500 Grant Avenue, Dequincy, LA 70633	50,000
St. Charles Parish Housing Authority, P.O. Box 448, Boutte, LA 70039	67,914
City of Albuquerque Housing Authority, P.O. Box 25064, Albuquerque, NM 87125-5064	250,000
City of Las Cruces Housing Authority, 926 S. San Pedro, Las Cruces, NM 88001	143,500
City of Santa Fe Housing Authority, P.O. Box CC, Santa Fe, NM 87502	208,500
Town of Bernalillo Housing Authority, 990 Calle Los Mayore, Bernalillo, NM 87004-	50,000
City of Broken Bow Housing Authority, P.O. Box 177, Broken Bow, OK 74728-0177	65,808
City of Hugo Housing Authority, P.O. Box 727, Hugo, OK 74743-0727	76,111
City of Lawton Housing Authority, 620 E. Ave., Lawton, OK 73501-4501	159,500
Oklahoma City Housing Authority, 1700 NE Fourth St., Oklahoma City, OK 73117	579,906
City of Shawnee Housing Authority, P.O. Box 3427, Shawnee, OK 74802-3427	207,000
City of Tulsa Housing Authority, P.O. Box 6369, Tulsa, OK 74148-0369	494,800
Choctaw Nation Housing Authority, P.O. Box G, Hugo, OK 74743-	436,800
Absentee Shawnee Housing Authority, P.O. Box 425, Shawnee, OK 74802-0425	250,000
Housing Authority of the Sac and Fox Nation, 526 N Kimberly, Shawnee, OK 74802	250,000
City of Austin Housing Authority, P.O. Box 6159, Austin, TX 78762-6159	381,800
City of Beaumont Housing Authority, P.O. Box 1312, Beaumont, TX 77704-1312	215,125
City of Corpus Christi Housing Authority, P.O. Box 7019, Corpus Christi, TX 78467-7019	388,058
Crystal City Housing Authority, 1014 E. Uvalde, Crystal City, TX 78839	143,800
City of Dallas Housing Authority, P.O. Box 191485, Dallas, TX 75219	985,418
City of Del Rio Housing Authority, P.O. Box 4080, Del Rio, TX 78841-4080	182,000
Denison Housing Authority, P.O. Box 477, Denison, TX 75020-0447	99,000
City of Edinburg Housing Authority, P.O. Box 295, Edinburg, TX 78540-0295	234,491
City of El Paso Housing Authority, P.O. Box 9895, El Paso, TX 79902-9895	931,906
City of Fort Worth Housing Authority, P.O. Box 430, Fort Worth, TX 76101-0430	185,675
City of Galveston Housing Authority, 920 53rd Street, Galveston, TX 77550-1012	205,950
City of Houston Housing Authority, P.O. Box 2971, Houston, TX 77252-9950	805,400
Jefferson Housing Authority, 610 N. Cass Street, Jefferson, TX 75657-	50,000
City of Laredo Housing Authority, 2000 San Francisco, Laredo, TX 78040	250,000
City of Mission Housing Authority, 906 E. 8th Street, Mission, TX 78572	154,000
Pearsall Housing Authority, 501 W. Medina, Pearsall, TX 78061-	50,000
City of Pharr Housing Authority, 211 W. Audrey, Pharr, TX 78577-	164,250
City of Robstown Housing Authority, 625 W. Avenue F, Robstown, TX 78380	120,000
City of San Antonio Housing Authority, P.O. Drawer 130, San Antonio, TX 78295-1300	1,168,800
City of San Benito Housing Authority, P.O. Box 1950, San Benito, TX 78586-1950	163,850
City of San Marcos Housing Authority, 1201 Thorp Lane, San Marcos, TX 78666	60,669
City of Sherman Housing Authority, P.O. Box 2147, Sherman, TX 75090-2147	141,640
City of Temple Housing Authority, P.O. Box 634, Temple, TX 76501-0634	161,395
City of Waco Housing Authority, P.O. Box 978, Waco, TX 76706-0978	250,000

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

[Fiscal Year 1992; Program Name: Public and Indian Housing Drug Elimination Program (PHDEP); Statute: Public Law 100-690, November 18, 1988]

Funding recipient (name and address)	Amount approved
City of Lubbock Housing Authority, P.O. Box 2568, Lubbock, TX 79408-2568	241,750
City of Des Moines Housing Authority, 1101 Crocker Street, Des Moines, IA 50309-1110	250,000
City of Knoxville Low Rent Housing Agency, 305 S. Third Street, Knoxville, IA 50138-2287	50,000
Iowa City Housing Authority, 410 E. Washington St., Iowa City, IA 52240-	30,930
Southern Iowa Regional Housing Authority, 421 North Vine St., Creston, IA 80201-	50,000
City of Topeka Housing Authority, 1312 Polk, Topeka, KS 66608	250,000
Atchison Housing Authority, 103 South 7th Street, Atchison, KS 66002-2882	95,500
Kansas City Kansas Housing Authority, 1124 N. Ninth Street, Kansas, KS 66101-2197	250,000
City of Macon Housing Authority, 218 Lakeview Towers, Macon, MO 63552-4160	52,500
City of Mexico Housing Authority, P.O. Box 484, Mexico, MO 65265-0484	127,000
St. Louis Co. Housing Authority (Kinloch), 8865 Natural Br. Rd., St. Louis, MO 63121-	100,000
City of Charleston Housing Authority, P.O. Box 67, Charleston, MO 63834-0067	139,981
City of Hannibal Housing Authority, P.O. Box 996, Hannibal, MO 63401-0996	127,051
City of Wellston Housing Authority, 1584 Ogden Avenue, Wellston, MO 63133-2413	105,000
City of Columbia Housing Authority, P.O. Box K, Columbia, MO 65205-5010	249,730
County of St. Louis Housing Authority, P.O. Box 23886, St. Louis, MO 63121	250,000
City of St. Louis Missouri Housing Authority, 4100 Lindell Bl., St. Louis, MO 63108-2999	766,915
Fulton Housing Authority, PO Box 814, Fulton, MO 65251-0814	90,000
City of Kansas City Missouri Housing Authority, 299 Paseo, Kansas City, MO 64106-2608	403,400
City of Omaha Housing Authority, 540 27th Street, Omaha, NE 68105-1521	614,600
City of Denver Housing Authority, P.O. Box 4305, Denver, CO 80204	788,325
City of Great Falls Housing Authority, 1500 Sixth Avenue, Great Falls, MT 59405-2599	110,000
Blackfeet Indian Housing Authority, P.O. Box 790, Browning, MT 59417-0790	230,000
Northern Cheyenne Tribal IHA, P.O. Box 327, Lama Deer, MT 59043-0327	250,000
Crow Tribal IHA, P.O. Box 99, Crow Agency, MT 59022-0099	129,968
Chippewa Cree Tribal IHA, P.O. Box 615, Box Elder, MT 59521-0615	191,000
Fort Peck Tribal IHA, P.O. Box 667, Poplar, MT 59255-0667	250,000
Fort Belknap Tribal IHA, Fort Belknap Indian Agency, Harlem, MT 59526-	240,500
Turtle Mountain Tribal IHA, P.O. Box 620, Belcourt, ND 58316-0620	250,000
Trenton Indian Housing Authority, P.O. Box 155, Trenton, ND	52,641
Cheyenne River Tribal IHA, P.O. Box 480, Eagle Butte, SD 57625-0480	245,000
Salt Lake City Housing Authority, 1800 SW Temple, Salt Lake City, UT 84115	148,276
Salt Lake County Housing Authority, 1962 South 200 East, Salt Lake City, UT 84115	250,000
Davis County Housing Authority, P.O. Box 328, Farmington, UT 84025-	77,000
City of Chandler Housing/Redevelopment Division, 99 North Delaware, Chandler, AZ 85225-	92,250
Pinal County Housing Department, 970 N 11 Mile Corner, Casa Grande, AZ 85222-	27,304
Housing Authority of the City of Yuma, 1350 W Colorado St., Yuma, AZ 85364-	92,500
City of Tucson Housing Authority, P.O. Box 27210, Tucson, AZ 85726-7210	219,400
City of Phoenix Housing Authority, 920 E. Madison, Phoenix, AZ 85034-2230	398,800
Nogales Housing Authority, 951 N. Kitchen St., Nogales, AZ 85621-	92,800
Housing Authority of the City of Eloy, 100 West Phoenix Ave., Eloy, AZ 85231-	47,700
City of Glendale Housing Authority, 6842 North 51st Ave., Glendale, AZ 85301-	50,000
Camarillo Area-Wide Housing Authority, 99 S. Glenn Drive, Camarillo, CA 93010	139,000
Housing Authority of the City of Madera, 205 North "G" Street, Madera, CA 93637-	100,000
County of Los Angeles Housing Authority, 4800 Brooklyn Avenue, Los Angeles, CA 90022-1399	198,240
City of Fresno Housing Authority, P.O. Box 11985, Fresno, CA 93776-1198	250,000
City of Oakland Housing Authority, 1619 Harrison Street, Oakland, CA 94612	661,158
County of Los Angeles Housing Authority, 4800 Brooklyn Avenue, Los Angeles, CA 90022-1399	107,616
San Bernardino County Housing Authority, 1053 North D Street, San Bernardino, CA 92410-3854	250,000
San Diego Housing Commission, 1625 Newton Street, San Diego, CA 92113	250,000
Imperial Valley Housing Authority, 1401 "D" Street, Brawley, CA 92227-	245,000
Santa Barbara County Housing Authority, P.O. Box 397, Santa Barbara, CA 93438-0397	249,500
Fresno County Housing Authority, P.O. Box 11985, Fresno, CA 93776-1198	250,000
County of Los Angeles Housing Authority, 4800 Brooklyn Avenue, Los Angeles, CA 90022-1399	260,544
City of Sacramento Housing Authority, P.O. Box 1834, Sacramento, CA 95809	155,553
Sacramento County Housing Authority, P.O. Box 1834, Sacramento, CA 95809-1834	76,782
City of Contra Costa Housing Authority, P.O. Box 2759, Contra Costa, CA 94553-2759	250,000
City of Los Angeles Housing Authority, P.O. Box 17157, Los Angeles, CA 90017-1295	1,340,400
City and County of San Francisco Housing Authority, 440 Turk Street, San Francisco, CA 94102	1,013,550
County of Marin Housing Authority, P.O. Box 4282, Marin, CA 94913-4282	50,000
Santa Barbara City Housing Authority, 808 Laguna Street, Santa Barbara CA 93101-1590	237,250
Northern Circle Indian Housing Authority, 694 Pinoleville Dr., Ukiah, CA 95482	102,060
State of Hawaii Housing Authority, P.O. Box 17907, Honolulu, HI 96817-1790	746,570
City of Reno Housing Authority, 1525 E. Ninth Street, Reno NV 89512	151,617
City of Las Vegas Housing Authority, P.O. Box 1897, Las Vegas, NV 89125	514,400
Housing Authority of the City of North Las Vegas, 1632 Yale Street, North Las Vegas, NV 89030	125,000
Cook Inlet Native Housing Authority, 670 W. Fireweed Lane, Anchorage, AK 99503	50,000
City of Portland Housing Authority, 135 SW Ash, Portland, OR 97204	526,800
City of Salem Housing Authority, P.O. Box 808, Salem, OR 97308-0808	168,075

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

[Fiscal Year 1992; Program Name: Public and Indian Housing Drug Elimination Program (PHDEP); Statute: Public Law 100-690, November 18, 1988]

Funding recipient (name and address)	Amount approved
City of Seattle Housing Authority, 120 Sixth Avenue, Seattle, WA 98109	974,850
King County Housing Authority, 15455 65th Avenue S, Seattle, WA 98199-2583	630,370
City of Bremerton Housing Authority, P.O. Box 631, Bremerton, WA 98310-0131	250,000
City of Tacoma Housing Authority, 1728 44th Street, Tacoma, WA 98404-4699	291,400
Snohomish County Housing Authority, 3425 Broadway, Everett, WA 98201-5095	90,555
City of Yakima Housing Authority, 110 Fair Ave., Yakima, WA 98901-3072	75,000
Makah Indian Housing Authority, P.O. Box 888, Neah Bay, WA 98357	95,500

[FR Doc. 93-31654 Filed 12-28-93; 8:45 am]
BILLING CODE 4210-33-P**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

[Docket No. N-93-3556; FR-3357-N-02]

**Flexible Subsidy Program:
Announcement of Funding Awards for FY 1993**

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding award decisions made by the Department under its Flexible Subsidy Program for Fiscal Year 1993. The announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Program Support Branch, Office of

Multifamily Housing Management, 451 Seventh Street SW., Washington DC 20410, telephone (202) 708-2654 (voice) or (202) 708-3938 (TDD for hearing-impaired). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The Department's Flexible Subsidy Program provides assistance to multifamily projects experiencing extreme financial difficulty. The Flexible Subsidy Program consists of two components:

(1) *Operating Assistance*—Operating assistance, provided in the form of a deferred loan and, in conjunction with other resources, is designed to restore or maintain the physical and financial soundness of eligible projects.(2) *Capital Improvement Loans*—Capital improvement loans are provided for projects that need capital improvements to achieve physical soundness, and that cannot be funded from project reserve funds without jeopardizing other major repairs or replacements that are reasonably expected to be required in the near future.

The Flexible Subsidy Fund is comprised of excess rental receipts paid to HUD from owners of section 236

projects, interest earned on the fund, repayment of Operating Assistance loans made by the Department in past fiscal years, and amounts appropriated by Congress, if any, to carry out the purposes of the Flexible Subsidy Program.

On June 7, 1993 (58 FR 32022), HUD published a Notice of Funding Availability (NOFA) which announced the availability of \$69,600,000 in funding for HUD's Flexible Subsidy Program. Of this amount, \$12,000,000 was made available for Capital Improvement Loans, and \$57,600,000 was made available for Operating Assistance.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing the names and addresses of the projects awarded funds under the FY 1993 Flexible Subsidy NOFA, and the amount of funds awarded to each project. This information is provided in Appendix A to this document.

Dated: December 20, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

APPENDIX A—LIST OF FLEXIBLE SUBSIDY PROJECTS FUNDED PURSUANT TO THE FY 1993 NOFA

FHA number	Project name/location	Owner's name/location	Program/amount awarded
REGION 01: 017-55004	WOOSTER SQUARE, NEW HAVEN, CT.	WOOSTER SQUARE CORP., NEW HAVEN, CT.	OPERATING ASSISTANCE, 837,732
REGION 02: 012-11012	FINIAN SULLIVAN HOUSES, YONKERS, NY.	SACRED HEART HSG CORP., YONKERS, NY.	OPERATING ASSISTANCE, 259,000
031-44088	VITA GARDENS, ASBURY PARK, NJ.	BETHEL NP HOUSING CORP., ASBURY PARK, NJ.	OPERATING ASSISTANCE, 357,867
035-44802	ACACIA LUMBERTON MANOR, LUMBERTON, NJ.	GRAND LODGE F&AM OF NJ, MILFORD, NJ.	OPERATING ASSISTANCE, 535,000
REGION 03: 000-55007	ST. JAMES MUTUAL HOMES, WASHINGTON, DC.	ST. JAMES MUTUAL HMS, INC., WASHINGTON, DC.	OPERATING ASSISTANCE, 1,139,333
033-44044	MON VIEW HEIGHTS, WEST MIFFLIN, PA.	MON VIEW HEIGHTS ASSOC., PITTSBURGH, PA.	CAPITAL IMPROVEMENT, 6,384,210
051-44074	BELL DIAMOND MANOR, NORFOLK, VA.	BEACON LIGHT CIVIC, INC., NORFOLK, VA.	OPERATING ASSISTANCE, 1,053,403

APPENDIX A—LIST OF FLEXIBLE SUBSIDY PROJECTS FUNDED PURSUANT TO THE FY 1993 NOFA—Continued

FHA number	Project name/location	Owner's name/location	Program/amount awarded
REGION 04:			
061-35006	BETHEL CHURCH HOMES I, ATHENS, GA.	BETHEL CHURCH HOMES, INC., ATHENS, GA.	OPERATING ASSISTANCE, 2,082,108
063-44007	CATHEDRAL TERRACE, JACKSONVILLE, FL.	CATHEDRAL FOUNDATION, JACKSONVILLE, FL.	OPERATING ASSISTANCE, 1,386,132
066-44022	TOWN PARK PLAZA SOUTH, MIAMI, FL.	TOWN PARK PLAZA SO, INC., MIAMI, FL.	OPERATING ASSISTANCE, 1,404,586
067-35006	TAMPA PARK I, TAMPA, FL	TAMPA PARK APTS, INC., TAMPA, FL.	CAPITAL IMPROVEMENT, 828,135
067-35006	.....DO	.....DO	OPERATING ASSISTANCE, 411,265
067-44802	MENORAH CENTER ST. PETERSBURG, FL.	MENORAH CENTER, INC., ST. PETERSBURG, FL.	CAPITAL IMPROVEMENT, 416,600
083-44073	JACKSON HOUSE, PADUCAH, KY.	WEST KY SR CITIZEN UNION, PADUCAH, KY.	OPERATING ASSISTANCE, 1,729,199
086-55005	CWA APARTMENTS II, NASHVILLE, TN.	COMMUNICATION WORKERS, NASHVILLE, TN.	OPERATING ASSISTANCE, 1,659,585
086-55005	.....DO	.....DO	CAPITAL IMPROVEMENT, 178,672
REGION 05:			
043-44065	CROSSROADS APARTMENTS, COLUMBUS, OH.	TUSKEGEE ALUMNI HSG., COLUMBUS, OH.	CAPITAL IMPROVEMENT, 1,446,676
044-55178	BIRCH RUN CO-OP, ROMULUS, MI.	BIRCH RUN COOP, ROMULUS, MI.	OPERATING ASSISTANCE, 1,882,331
046-44083	MALVERN PLACE APARTMENTS, CINCINNATI, OH.	MT. AUBURN GOOD HOUSING, CINCINNATI, OH.	OPERATING ASSISTANCE, 1,023,974
047-55010	STRATFORD TOWNHOUSES I, GRAND RAPIDS, MI.	STRATFORD TW CON HSG. CORP., GRAND RAPIDS, MI.	OPERATING ASSISTANCE, 575,512
047-55010	.....DO	.....DO	CAPITAL IMPROVEMENT, 137,813
047-55046	STRATFORD TOWNHOUSES II, GRAND RAPIDS, MI.	.....DO	OPERATING ASSISTANCE, 862,424
047-55046	.....DO	.....DO	CAPITAL IMPROVEMENT, 133,875
071-44146	MAYSLAKE VILLAS, OAKBROOK, IL.	FRANCISCAN TERTIARY, CHICAGO, IL.	OPERATING ASSISTANCE, 373,538
075-35071	OAKWOOD HAVEN, CRIVITZ, WI	CRIVITZ NP HOUSING CORP., CRIVITZ, WI.	CAPITAL IMPROVEMENT, 58,895
075-35072	COLEMAN MANOR, COLEMAN, WI.	COLEMAN MANOR, INC., COLEMAN, WI.	CAPITAL IMPROVEMENT, 61,930
075-35073	LAONA MANOR, LAONA, WI	LAONA MANOR NP HSG. CORP., LAONA, WI.	CAPITAL IMPROVEMENT, 62,040
075-35076	PIONEER VILLA, SURING, WI	SURING NP HOUSING CORP., SURING, WI.	CAPITAL IMPROVEMENT, 67,450
075-35077	VINE COURT APARTMENTS, NIAGARA, WI.	NIAGARA NP HOUSING CORP., NIAGARA, WI.	CAPITAL IMPROVEMENT, 62,040
075-35078	GOODMAN APARTMENTS, GOODMAN, WI.	GOODMAN HOMES NOW CORP., GOODMAN, WI.	CAPITAL IMPROVEMENT, 62,040
075-44096	SOUTHSIDE REVITALIZATION, RACINE, WI.	THE HOME COMPANY, INC., RACINE, WI.	OPERATING ASSISTANCE, 92,032
092-44203	BOOTH MANOR, MINNEAPOLIS, MN.	THE SALVATION ARMY, BROOKLYN CENTER, MN.	OPERATING ASSISTANCE, 2,875,500
REGION 06:			
059-35056	NATCHITOCHE-S-THOMAS APTS, NATCHITOCHE, LA.	NATCHITOCHE-S-THOMAS APTS, NATCHITOCHE, LA.	OPERATING ASSISTANCE, 1,254,300
082-35036	HAYGOOD-NEAL GARDEN APTS, EL DORADO, AR.	CHRISTIAN METH EPIS CH, MEMPHIS, TN.	OPERATING ASSISTANCE, 568,030
082-35036	.....DO	.....DO	CAPITAL IMPROVEMENT, 592,380
082-35109	SMITH-KEYS VILLAGE APTS, TEXARKANA, AR.	CHRISTIAN METHO EPIS CH, MEMPHIS, TN.	OPERATING ASSISTANCE, 819,498
082-35109	.....DO	.....DO	CAPITAL IMPROVEMENT, 717,320
114-35050	SUNSET HILLS APARTMENTS, SAN AUGUSTINE, TX.	KNIGHTS OF PHYTHIAS, SAN AUGUSTINE, TX.	OPERATING ASSISTANCE, 702,996
REGION 07:			
074-44010	HORIZON HMS OF DAVENPORT, DAVENPORT, IA.	HORIZON HMS OF DAVENPORT, DAVENPORT, IA.	CAPITAL IMPROVEMENT, 649,603
084-44014	NORTHWOOD TERRACE APTS, ST. JOSEPH, MO.	ST. JOSEPH, PCAP, INC., ST JOSEPH MO.	CAPITAL IMPROVEMENT, 265,372
084-44055	CENTURY 37, KANSAS CITY, MO.	CENTURY 37 APTS, LTD., KANSAS CITY, MO.	OPERATING ASSISTANCE, 125,015

APPENDIX A—LIST OF FLEXIBLE SUBSIDY PROJECTS FUNDED PURSUANT TO THE FY 1993 NOFA—Continued

FHA number	Project name/location	Owner's name/location	Program/amount awarded
102-44019	COMMERCE GARDENS, HUTCHINSON, KS.	COMMERCE GARDENS, INC., HUTCHINSON, KS.	OPERATING ASSISTANCE, 737,974
REGION 08:			
091-44013	MEL ROS VILLAGE I, ABERDEEN, SD.	MEL ROS VILLAGE, LTD., ABERDEEN, SD.	CAPITAL IMPROVEMENT, 1,118,571
101-44145	GATEWAY VILLAGE, FORT MORGAN, CO.	FMHA GATEWAY CORP., FORT MORGAN, CO.	OPERATING ASSISTANCE, 1,800,000
REGION 09:			
121-35099	HUMBOLT PLAZA, ARCATA, CA	HUMBOLT PLAZA INC., ARCATA, CA.	CAPITAL IMPROVEMENT, 553,190
121-35216	EMMANUEL TERRACE APTS, SAN JOSE, CA.	EMMANUEL TERRACE I, SAN JOSE, CA.	OPERATING ASSISTANCE, 26,730
121-44080	VILLA GARCIA APARTMENTS, SAN JOSE, CA.	HUMAN BRIDGE, INC., BERKELEY, CA.	OPERATING ASSISTANCE, 642,642
121-44164	COLORADO PARK APARTMENTS, PALO ALTO, CA.	COLORADA HSG CORPORATION, PALO ALTO, CA.	OPERATING ASSISTANCE, 485,182
121-44280	MARTIN LUTHER KING SQ., FRESNO, CA.	KING OF KINGS HSG. DEV., FRESNO, CA.	OPERATING ASSISTANCE, 562,876
121-44442	LINDA GLEN, OAKLAND, CA	SATELITE SENIOR HMS, INC., OAKLAND, CA.	OPERATING ASSISTANCE, 67,755
121-44801	BETH ASHER APARTMENTS, OAKLAND, CA.	.....DO	OPERATING ASSISTANCE, 257,184
121-44812	SATELITE CENTRAL, OAKLAND & BERKELEY, CA.	.....DO	OPERATING ASSISTANCE, 1,517,000
121-44816	ST. PATRICKS TERRACE, OAKLAND, CA.	.....DO	OPERATING ASSISTANCE, 498,395
121-44817	OTTERBEIN MANOR, OAKLAND, CA.	.....DO	OPERATING ASSISTANCE, 220,555
121-44818	ST. ANDREW'S MANOR, OAKLAND, CA.	.....DO	OPERATING ASSISTANCE, 472,764
121-44819	LAWRENCE MOORE APTS, BERKELEY, CA.	.....DO	OPERATING ASSISTANCE, 420,760
122-44812	PLYMOUTH WEST APARTMENTS, LONG BEACH, CA.	UNITED CH RETIREMENT HMS, LONG BEACH, CA.	OPERATING ASSISTANCE, 925,078

[FR Doc. 93-31650 Filed 12-28-93; 8:45 am]
BILLING CODE 4210-27-P

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-93-3619; FR-3508-N-02]

Public and Indian Housing Drug Elimination, Technical Assistance Program; Announcement of Funding Awards for FY 1993

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for Public and Indian Housing Drug Elimination, Technical Assistance

Program. This announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Cocke, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1197. A telecommunication device for hearing or speech impaired persons (TDD) is available at (202) 708-0850. [These are not toll-free telephone numbers.]

SUPPLEMENTARY INFORMATION: The purpose of the competition was to provide funds to Public and Indian Housing Drug Elimination, Technical Assistance Program for short-term technical assistance to public housing agencies, Indian housing authorities, resident management corporations, and incorporated resident councils that are combating abuse of controlled substances in public housing communities. This program have been

appropriated by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (Pub. L. 102-389, approved October 6, 1992). The Department published a Fiscal Year 1993 NOFA announcing the availability of \$600,000 for technical assistance in public housing.

The 1993 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on June 4, 1993 (58 FR 31870). Applications were scored and selected for funding based on criteria contained in the Notice.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing in the names, addresses, and the amount of funds awarded, as set out at the end of this Notice.

Dated: December 13, 1993.

Michael B. Janis,
General Deputy Assistant Secretary for Public and Indian Housing.

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS

[Fiscal Year 1993; Program Name: Public and Indian Housing Drug Elimination Technical Assistance Program; Statute: Public Law 102-389, October 6, 1992]

Funding recipient (name, address, PHA/IHA/RMC/RC site)	Amount approved
Dev. Research & Programs, P.O. Box 5844, Salem, OR 97304, Housing Authority of Baltimore City, Baltimore, MD	8,834
Florence Adcock, 4615 Summerhill Rd., #, Texarkana, TX 75503, Prescott Housing Authority, Prescott, AR	7,250
Veronica Alfonzo, Calle 5 E-10, Camuy, PR 00627, Corporacion De Residents, Arecibo, PR	7,400
Horus Alkebu-Lan, P.O. Box 121, Chesterfield, VA 23832, Ida Barbour Tenant Council, Portsmouth, VA	7,146
Robert Anderson, 444 North Capitol St., Washington, DC 20001, Newark Housing Authority, Newark, NJ	9,994
Michael Appleby, 1533 Clay Street, Blacksburg, VA 24060-9159, Bristol Housing Authority, Bristol, VA	9,680
C. Jean Bennett, 207 Valley North Blvd., Jackson, MS 39206, Natchez Housing Authority, Natchez, MS	6,277
C. Jean Bennett, 207 Valley North Blvd., Jackson, MS 39206, Housing Authority of the City of Vicksburg, Vicksburg, MS	7,000
Robert Borghese, 21 South 12th Street, Philadelphia, PA 19107, Newburgh Housing Authority, Newburgh, NY	8,100
Robert Borghese, 21 South 12th Street, Philadelphia, PA 19107, Housing Authority of the Town of Laurinburg, Laurinburg, NC	8,348
Robert Borghese, 21 South 12th Street, Philadelphia, PA 19107, Lynn Housing Authority, Lynn, MA	5,973
Lynn Borrell, 1165 North Clarke, Sui, Chicago, IL 60610, Austin Housing Authority, Austin, TX	10,000
Lynn Borrell, 1165 North Clarke, Sui, Chicago, IL 60610, Plattsburgh Housing Authority, Plattsburgh, NY	8,093
James Brooks, 6628 Fran Drive, Macon, GA 31206, Douglas Housing Authority, Douglas, GA	9,310
Michael Browning, P.O. Box 712055, Los Angeles, CA 90071, Mar Vista Gardens Resident Council, Los Angeles, CA	8,200
David Buches, R.D. 1, Box 735A, Dover, DE 19901, Fayette County Housing Authority, Uniontown, PA	8,580
David Buches, R.D. 1, Box 735A, Dover, DE 19901, Montgomery County Housing Authority, Norristown, PA	6,580
David Buches, R.D. 1, Box 735A, Dover, DE 19901, Housing Authority of Winston-Salem, Winston-Salem, NC	8,356
Bernard Buckner, 1244 Wagar Road, Rocky River, OH 44116-1425, Stark Metropolitan Housing Authority, Canton, OH	8,920
John Burgess, 95 Forest Avenue, Middletown, RI 02840, Spring Valley Housing Authority, Spring Valley, NY	8,250
Frank Burks, 1756 East 74th Street, Chicago, IL 60649, Housing Authority of the County of Contra Costa, Martinez, CA	2,155
Billy Burwell, 7206 Willow Street, Meridian, MS 39307, Mississippi Regional Housing Authority #8, Gulfport, MS	6,410
Billy Burwell, 7206 Willow Street, Meridian, MS 39307, Hazlehurst Housing Authority, Hazlehurst, MS	6,410
Herbert Carter, P.O. Box 12311, Raleigh, NC 27605, Pawtucket Housing Authority, Pawtucket, RI	2,420
Herbert Carter, P.O. Box 12311, Raleigh, NC 27605, Lexington Housing Authority, Lexington, NC	9,863
Ted Chism, P.O. Box 5889, Charleston, OR 97420, Nampa Housing Authority, Nampa, ID	6,950
Ted Chism, P.O. Box 5889, Charleston, OR 97420, North Bend City/Coos-Curry Counties Housing Authority, North Bend, OR	2,988
Henry Clark, 534 East 37th, Chicago, IL 60653, Housing Authority of the County of Contra Costa, Martinez, CA	2,260
Joseph Cleary, 345 Grand View Blvd., Yonkers NY 10710, Bridgeport Housing Authority, Bridgeport, CT	7,235
Charles Coletti, 65 Lafayette Drive, Port Chester, NY 10573, Meriden Housing Authority, Meriden, CT	7,160
Charles Coletti, 65 Lafayette Drive, Port Chester, NY 10573, Johnstown Housing Authority, Johnstown, PA	7,470
Ella Collins-Nelson, P.O. Box 8714, Forth Worth, TX 76124-8714, Grapevine Housing Authority, Grapevine, TX	8,785
Ella Collins-Nelson, P.O. Box 8714, Forth Worth, TX 76124-8714, Abilene Housing Authority, Abilene, TX	9,802
Gary Cordner, 410 Stratton Building, Richmond, KY 40475, Richmond Housing Authority, Richmond, KY	5,500
Delia Council, 875 Glenway Dr. #46, Inglewood, CA 90302, Housing Authority of the City of Los Angeles, Los Angeles, CA	9,275
Shirley Curry, 113 Belew Circle, Waynesboro, TN 38485, Cumberland Plateau Regional Housing Authority, Lebanon, VA	8,599
Katherine Dahlem, 900 Summit Avenue East, Seattle, WA 98102, Seattle Housing Authority, Seattle, WA	7,076
Jerry Eames, 718 St. Charles, Moberly, MO 65270, Macon Housing Authority, Macon, MO	7,360
Anne Fallis, R.R. 1, Box 1845, Rapid City, SD 57702-9715, Fort Berthold Housing Authority, New Town, ND	8,670
Kenneth Finlayson, 813 North Van Buren St., Wilmington, DE 19806, South Bend Housing Authority, South Bend, IN	9,800
James George, 6350 North Park Avenue, Indianapolis, IN 46220, Marion Housing Authority, Marion, IN	5,796
Joseph Girardo, 208 Hall Avenue, Point Pleasant, NJ 08742, Stella Wright Resident Management Corporation, Newark, NJ	6,500
Kirk Gray, 7188 Cradlerock Way, S. Columbia, MD 21045, Holyoke Housing Authority, Holyoke, MA	9,172
Susan Guyette, 97 Moya Road, Santa Fe, NM 87505, Southern Ute Tribal Housing Authority, UT	9,998
Susan Guyette, 97 Moya Road, Santa Fe, NM 87505, Chickasaw Indian Housing Authority Grant #1, Ada, OK	9,484
Susan Guyette, 97 Moya Road, Santa Fe, NM 87505, Sac & Fox of Kansas, Reserve, KS	8,566
Susan Guyette, 97 Moya Road, Santa Fe, NM 87505, Tonkawa Tribal Housing Authority, Tonkawa, OK	9,340
Robert Harrison, 11302 Lake Front Court, Mitchellville, MD 20721, Housing Opportunities Commission of Montgomery County, Rockville, MD	3,800
Robert Harrison, 11302 Lake Front Court, Mitchellville, MD 20721, St. Michaels Housing Authority, St. Michaels, MD	4,580
Spencer Haywood, 1442C Robert Bradby Dr., Detroit, MI 48207, Chippewa Cree Housing Authority, Box Elder, MT	9,877
John Heeney, P.O. Box 20626, Kansas City, MO 64195-0626, Moberly Housing Authority, Moberly, MO	3,163
Ian Horncastle, 830 South Woodlawn Ave, Okmulgee, OK 74447, Butler Metropolitan Housing Authority, Hamilton, OH	8,172
Ian Horncastle, 830 South Woodlawn Ave, Okmulgee, OK 74447, Cullman Housing Authority, Cullman, AL	8,162
Ian Horncastle, 830 South Woodlawn Ave, Okmulgee, OK 74447, Anniston Housing Authority, Anniston, AL	8,085
Johnathan Howland, 84 East Newton Street, Boston, MA 02118, Plymouth Housing Authority, Plymouth, MA	6,775
Johnathan Howland, 85 East Newton Street, Boston, MA 02118, Attleboro Housing Authority, Plymouth, MA	3,750
Jim Hullivan, 148 South Victory Blvd, Burbank, CA 91502, Daytona Beach Housing Authority, Daytona Beach, FL	8,900
Julia Iacono, 10 Carder Street, West Warwick, RI 02893, Akwesasne Housing Authority, Akwesasne, NY	7,724
El Bromoe Ibrahim, P.O. Box 121, Chesterfield, VA 23832, Pin Oaks Estates Resident Council Grant #1, Petersburg, VA	9,350
Ricardo Jasso, P.O. Box 11615, Casa Grande, AZ 85230, Kaw Tribe Housing Authority, Newkirk, OK	7,520
Ricardo Jasso, P.O. Box 11615, Casa Grande, AZ 85230, Absentee Shawnee Housing Authority, Shawnee, OK	7,553
Irene Johnson, 4806 West 44th Street, Chicago, IL 60638, Alemanny Resident Management Corporation, San Francisco, CA	7,600
Herman Jones, 1329 Page Street, Pittsburgh, PA 15233, Marianna Terrace Resident Council, Cincinnati, OH	8,996
Richard Keefe, 48 Goetze Street, Bay Head, NJ 08742, Boonton Housing Authority, Boonton, NJ	5,000
Carolyn Kusler, 2706 Raintree Circle, Sapulpa, OK 74136, Idabel Housing Authority, Idabel, OK	9,438
Carolyn Kusler, 2706 Raintree Circle, Sapulpa, OK 74136, Tulsa Housing Authority, Tulsa, OK	6,183
Arthur Lachioma, 4224 Michigan Avenue, Fort Myers, FL 33916, Chester Housing Authority, Chester, PA	4,910
Margot Lebrasseur, 725 2nd Street, NE, Washington, DC 20002, Keweenaw Bay Ojibwa Housing Authority, Baraga, MI	9,389

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

[Fiscal Year 1993; Program Name: Public and Indian Housing Drug Elimination Technical Assistance Program; Statute: Public Law 102-389, October 6, 1992]

Funding recipient (name, address, PHA/IHA/RMC/RC site)	Amount approved
Margot Lebrasseur, 725 2nd Street, NE, Washington, DC 20002, Menominee Tribal Housing Authority, Keshena, WI	8,177
Nancy Lowe-Connor, 3406 Wild Cherry Road, Baltimore, MD 21207, Fontana Village Resident Council, Baltimore, MD	9,866
Nancy Lowe-Connor, 3406 Wild Cherry Road, Baltimore, MD 21207, Housing Authority of the City of Frederick, Frederick, MD	9,716
Nancy Lowe-Connor, 3406 Wild Cherry Road, Baltimore, MD 21207, Lackawanna Housing Authority, Lackawanna, NY	8,407
Allyson Maida, P.O. Box 1757, Port Chester, NY 10573, Port Chester Housing Authority, Port Chester, NY	9,473
James Martin, P.O. Box 136, Biddeford Pool, ME 04006, Malden Housing Authority, Malden, MA	7,686
Richard Martin, P.O. Box 12311, Raleigh, NC 27605, Pawtucket Housing Authority, Pawtucket, RI	6,490
Eloise Matthews, 1233 Richards Blvd., Sacramento, CA	6,430
Christopher McCall, 1585 West Cloaninger S. Statesville, NC 28677, Titusville Housing Authority, Titusville, FL	7,602
Carolyn McKenzie, 211 Porter Lane, Jonesboro, GA 30236, Housing Authority of the City of Savannah, Savannah, GA	7,072
Beverly McLendon, 870 TWHs 1 Lucas Creek, Newport News, VA 23602, Chesapeake Redevelopment and Housing Authority, Chesapeake, VA	7,900
Renard McNeil, 131 Ponce De Leon Ave., Atlanta, GA 30308, Alma Housing Authority, Alma, GA	9,750
Guila Muler, 3724 38th Avenue, South, Seattle, WA 98144, Rosebud Tribal Housing Authority, Rosebud, SD	10,000
Jim Munro, 7335 North Shores Driv., Navarre, FL 32566, Fort Walton Beach Housing Authority, Fort Walton Beach, FL	6,087
Murali Nair, 207 Mather Hall, Cleveland, OH 44115, Truth or Consequences Housing Authority, Truth or Consequences, NM	7,350
James Nolan, 5228 Fairfield Blvd., Virginia Beach, VA 23464, Norfolk Redevelopment and Housing Authority, Norfolk, VA	2,120
Susan Noonan, 801 Plum Street, Room, Cincinnati, OH 45202-1968, Cincinnati Resident Advisory Board, Cincinnati, OH	8,300
Michael Norman, 482 Edgewood Avenue, Atlanta, GA 30360, Fairfield Resident Management Corporation, Fairfield, AL	8,410
Nuva, Inc., 100 Main Street, Gloucester, MA 01930, Presque Isle Housing Authority, Presque Isle, ME	7,510
Nuva, Inc., 100 Main Street, Gloucester, MA 01930, Melbourne Housing Authority, Melbourne, FL	9,628
Nuva, Inc., 100 Main Street, Gloucester, MA 01930, Gloucester Housing Authority, Gloucester, MA	5,000
Jeffrey Oshins, 271 Rosario Park Road, Santa Barbara, CA 93105, Helena Housing Authority, Helena, MT	7,200
Jeffrey Oshins, 271 Rosario Park Road, Santa Barbara, CA 93105, North Bend City/Coos-Curry Counties Housing Authority, North Bend, OR	5,754
Jeffrey Oshins, 271 Rosario Park Road, Santa Barbara, CA 93105, Eureka Housing Authority, Eureka, CA	7,605
Darren Palmer, P.O. Box 1626, Atlantic City, NJ 08404, Scattered Sites Tenants Association, Atlantic City, NJ	2,474
Randall Payne, 513 South Court Drive, Michigan City, IN 46360, Hammond Housing Authority, Hammond, IN	9,330
Ronald Porter, 112 North Beatty Street, Pittsburgh, PA 15206, Housing Authority of the City of Pittsburgh, Pittsburgh, PA	7,775
Ronald Porter, 112 North Beatty Street, Pittsburgh, PA 15206, Columbus Metropolitan Housing Authority, Columbus, OH	9,001
Pride, 1240 Johnson Ferry Pl., Marietta, GA 30068, Yamhill County Housing Authority, McMinnville, OR	6,592
Pride, 1240 Johnson Ferry Pl., Marietta, GA 30068, Housing Authority of the City of Salem, Salem, OR	9,372
Quadel Con, 1250 Eye Street, NW, S, Washington, DC 20005, Greater Metropolitan Housing Authority of Rock Island County, Silvis, IL	6,520
Chester Quarles, Route 5, Box 227-C, Oxford, MS 38655, Tacoma Housing Authority, Tacoma, WA	7,000
Chester Quarles, Route 5, Box 227-C, Oxford, MS 38655, Mississippi Regional Housing Authority #6, Jackson, MS	7,720
Nazim Rashid, 226 Orange Street, #3, Oakland, CA 94610, Marin City Resident Management Corporation, Marin City, CA	4,900
Raymond Rivers, P.O. Box 1184, Elizabeth City, NC 27909, Housing Authority of the City of Wheeling, Wheeling, WV	3,740
Susan Robertson, 30 Washington Street, Central Falls, RI 02863, South Portland Housing Authority, South Portland, ME	5,803
James Rogers, Oklahoma State Univ. W, Stillwater, OK 740780618, Pascua Yaqui Housing Authority, Tucson, AZ	7,200
David Rouen, P.O. Box 1827, Carolina Beach, NC 28412, Philadelphia Resident Advisory Council, Philadelphia, PA	9,806
David Rouen, P.O. Box 1827, Carolina Beach, NC 28412, Northport Housing Authority, Northport, AL	9,292
Amy Rowen, 3571 Woodbridge Road, Cleveland Heights, OH 44121, Hartford Housing Authority, Hartford, CT	9,137
Michelle Saka El, 811 West 49th Street, Richmond, VA 23225, Pin Oaks Estates Resident Council Grant #2, Petersburg, VA	6,455
Karriem Shabazz, 3150 Borge Street, Oakton, VA 22124, Montgomery County Housing Authority, Rockville, MD	4,550
Karriem Shabazz, 3150 Borge Street, Oakton, VA 22124, Norfolk Redevelopment and Housing Authority, Norfolk, VA	3,800
Karriem Shabazz, 3150 Borge Street, Oakton, VA 22124, Housing Authority of the Birmingham District, Birmingham, AL	5,680
Karriem Shabazz, 3150 Borge Street, Oakton, VA 22124, Newport Housing Authority, Newport, RI	5,056
Ronald Simpkins, P.O. Box 157151, Cincinnati, OH 45215, Winton Terrace Resident Council, Cincinnati, OH	4,793
Ronald Simpkins, P.O. Box 157151, Cincinnati, OH 45215, Findlater Gardens Resident Council, Cincinnati, OH	4,793
Bessie Singletary, 3732 Vest Mill Road, Winston Salem, NC 27103, Kimberly Park Resident Council, Winston-Salem, NC	8,500
Severin Sorensen, P.O. Box 34469, Bethesda, MD 20827, Statesville Housing Authority, Statesville, NC	6,240
Severin Sorensen, P.O. Box 34469, Bethesda, MD 20827, Pasco and Franklin County Housing Authority, Pasco, WA	9,854
Severin Sorensen, P.O. Box 34469, Bethesda, MD 20827, Newport News Redevelopment and Housing Authority, Newport News, VA	6,992
Severin Sorensen, P.O. Box 34469, Bethesda, MD 20827, Bristol Housing Authority, Bristol, CT	7,896
Severin Sorensen, P.O. Box 34469, Bethesda, MD 20827, Alma Housing Authority, Alma, AR	7,190
Severin Sorensen, P.O. Box 34469, Bethesda, MD 20827, Ecorse Resident Council, Ecorse, MI	10,000
Severin Sorensen, P.O. Box 34469, Bethesda, MD 20827, Woonsocket Housing Authority, Woonsocket, RI	9,590
Severin Sorensen, P.O. Box 34469, Bethesda, MD 20827, Dechard Housing Authority, Dechard, TN	7,567
Charles Stansbury, 206 Renfrew Avenue, Trenton, NJ 08618, Long Branch Housing Authority, Long Branch, NJ	8,580
Errol Strider, P.O. Box 583, Boulder, CO 80306, Fort Myers Housing Authority, Fort Myers, FL	6,097
Strive, 715 Commerce, Tacoma, WA 98402, Salishan Alliance for Community Services, Tacoma, WA	9,870
Ann Sturges, 324 Timberwind Road, Edmond, OK 73034, Langston Housing Authority, Langston, OK	4,640
Alexander Sutton, 1133 Kensington Avenue, Plainfield, NJ 07060, Princeton Housing Authority, Princeton, NJ	8,180
Graylyn Swilley, 3909 Reading Road, Cincinnati, OH 45229, Seminole Housing Authority, Seminole, OK	9,690
Paul Tanner, 5618 Shorewood Road, Jacksonville, FL 32210, Pahokee Housing Authority, Pahokee, FL	8,711
Paul Tanner, 5618 Shorewood Road, Jacksonville, FL 32210, Maxton Housing Authority, Maxton, NC	7,693
Douglas Tennant, 162 Third Avenue North, Nashville, TN 37201, Franklin Housing Authority, Franklin, TN	9,050

PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

(Fiscal Year 1993; Program Name: Public and Indian Housing Drug Elimination Technical Assistance Program; Statute: Public Law 102-389, October 6, 1992)

Funding recipient (name, address, PHA/IHA/RMC/RC site)	Amount approved
Douglas Tennant, 162 Third Avenue North, Nashville, TN 37201, Springfield Housing Authority, Springfield, TN	7,824
Paul Turner, 410 Castello Road, Lafayette, CA 94549, Yakima Nation Resident Council, Wapato, WA	9,595
Alberto Varela, Ave. Hostos No. 431, Hato Rey, PR 00918, Management-Administration Service Corporation, Rio Piedras, PR ..	7,840
Ralph Varela, 1262 Avenida Grande, Casa Grande, AZ 85222, Alamosa Housing Authority, Alamosa, CO	5,350
Carol Voorhees, 2563 Neffs Circle, Salt Lake City, UT 84111, Alameda Housing Authority, Alameda, CA	6,718
John Waddy, Jr., 209 South High Street, Columbus, OH 43215, Bluefield Housing Authority, Bluefield, WV	6,851
Gilbert Walker, 7724 South Luella, Chicago, IL 60653, Housing Authority of the County of Contra Costa, Martinez, CA	4,300
Nina Wallerstein, 2400 Tucker NE., Univ., Albuquerque, NM 87131, Tucumcari Housing Authority, Tucumcari, NM	8,560
Michele Waltz, 7640 SW. 34th #1, Portland, OR 97219, Clackamas County Housing Authority, Oregon City, OR	8,720
Barbara Warner-Ross, 4900 NW. 36th, Oklahoma City, OK 73122, Delaware Tribal Housing Authority, Chelsea, OK	6,970
Barbara Warner-Ross, 4900 NW. 36th, Oklahoma City, OK 73122, Comanche Tribe Housing Authority, Lawton, OK	6,297
George Waters, 309 Market Street, Sul, Camden, NJ 08102, Camden Housing Authority, Camden, NJ	8,535
Leon Watkins, 220 E. 60th Street, Los Angeles, CA 90011, Alison-Village Resident Advisory Council, Los Angeles, CA	600
Abbie Weist, P.O. Box 662, Boca Grande, FL 33921, Sarasota Housing Authority, Sarasota, FL	6,650
Denise Wesley, 6417 Scott Lane, Fort Myers, FL 33916, Chester Housing Authority, Chester, PA	4,730
Brian Westphal, 6390 Douglas Drive, #3, Brooklyn Park, MN 55429, St. Cloud Housing Authority, St. Cloud, MN	6,000
Brian Westphal, 6390 Douglas Drive, #3, Brooklyn Park, MN 55429, Duluth Housing Authority, Duluth, MN	5,110
Brian Westphal, 6390 Douglas Drive, #3, Brooklyn Park, MN 55429, Rochester Housing Authority, Rochester, MN	4,622
Brian Westphal, 6390 Douglas Drive, #3, Brooklyn Park, MN 55429, River Rouge Tenant Council, River Rouge, MI	6,946
Brian Westphal, 6390 Douglas Drive, #3, Brooklyn Park, MN 55429, Hibbing Housing Authority, Hibbing, MN	5,011
Brian Westphal, 6390 Douglas Drive, #3, Brooklyn Park, MN 55429, Moorhead Housing Authority, Moorhead, MN	5,480
Lexie Williams, 1177 Dominion Court, Port Orange, FL 32119, Cocoa Housing Authority, Cocoa, FL	2,847
Debra Williams-House, 1809 Fairpoints Trace, Stone Mountain, GA 30083, Detroit Housing Department, Detroit, MI	9,640
Mark Willie, 2363 Phillips Road, Mt. Holly, NJ 08060, Housing Authority of the City of Savannah, Savannah, GA	2,922
Peggy Wireman, 4001 Monona Drive, #10, Madison, WI 53716, Crossville Housing Authority, Crossville, TN	6,225
Herman Wrice, 649 North 35th Street, Philadelphia, PA 19104, Marion Housing Authority, Marion, IN	4,170
Herman Wrice, 649 North 35th Street, Philadelphia, PA 19104, Dublin Housing Authority, Dublin, GA	4,639
Herman Wrice, 649 North 35th Street, Philadelphia, PA 19104, Key West Housing Authority, Key West, FL	9,068
Harold Wright, 2551 Melaway Drive, Richmond, VA 23228, Franklin Redevelopment and Housing Authority, Franklin, VA	9,156
Stephen Wright, 8437 Saddlebrook Drive, North Charleston, SC 29420, Kanawha Housing Authority, Kanawha, WV	4,200
Stephen Wright, 8437 Saddlebrook Drive, North Charleston, SC 29420, Huntington Housing Authority, Huntington, WV	4,780
Janice Yates, Route 3, Box 35, Wellston, OK 74881, Albion Housing Authority, Albion, MI	7,500
Janice Yates, Route 3, Box 35, Wellston, OK 74881, Chickasaw Tribal Housing Authority Grant #2, ADA, OK	7,545
Lillian Young, 1447 Peachtree Street, Atlanta, GA 30309, Ocala Housing Authority, Ocala, FL	9,911
Lillian Young, 1447 Peachtree Street, Atlanta, GA 30309, Ellijay Housing Authority, Ellijay, GA	8,621

[FR Doc. 93-31655 Filed 12-28-93; 8:45 am]

BILLING CODE 4210-33-P-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-5440-10 B021]

Availability of Supplemental Draft Environmental Statement for Bolo Station Landfill, San Bernardino County

AGENCY: Bureau of Land Management, Interior.**ACTION:** Notice of availability of supplemental draft environmental impact statement.**SUMMARY:** Notice is hereby given that the Bureau of Land Management and the County of San Bernardino have prepared a joint Federal-County supplemental draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Rail-Cycle proposed Class III Bolo Station

landfill disposal site, near Amboy, California. A draft EIR/EIS was distributed in December, 1992. With the collection of additional data and additional analysis on Air Quality, Geology and Groundwater, and Purpose and Need, it was determined that a supplemental EIR/EIS be prepared for public review. The public review period for the supplemental EIR/EIS begins December 23, 1993 and will continue to February 21, 1994. All comments must be in writing.

DATES: Written comments will be accepted, if dated on or before February 21, 1994.**ADDRESSES:** Comments should be sent to Bureau of Land Management, California Desert District Office, Attn: Rail-Cycle, 6221 Box Springs Blvd., Riverside, CA 92507.**FOR FURTHER INFORMATION CONTACT:** Douglas Romoli, Environmental Specialist, California Desert District—909-697-5230.

Dated: December 21, 1993.

Henri R. Bisson,*District Manager.*

[FR Doc. 93-31752 Filed 12-28-93; 8:45 am]

BILLING CODE 4310-40-M

[AK-070-04-4410-02-P]

Intent to Prepare an Environmental Impact Statement; Wild and Scenic River Study; Squirrel River, AK.

AGENCY: Bureau of Land Management, Interior.**ACTION:** Notice of Intent to prepare an Environmental Impact Statement (EIS); Wild and Scenic River Study, Squirrel River, Alaska.**SUMMARY:** The Bureau of Land Management (BLM), Kobuk District Office, is preparing an Environmental Impact Statement for the study of the Squirrel River for possible inclusion in the national wild and scenic rivers system. This proposed action was authorized by the Alaska National Interest Lands Conservation Act of

December 2, 1980 (ANILCA, Pub. 96-487). The Squirrel River, a tributary of the Kobuk River in northwest Alaska, was studied in 1985 by the National Park Service (NPS) for possible inclusion in the national wild and scenic river system. After publication of a draft EIS, further action by NPS was deferred for several reasons. One of these reasons included the delegation of authority to BLM to conduct wild and scenic river studies on rivers under its management.

The proposed action in the NPS study called for designation of the federally-administered portion of the Squirrel River, plus the lower 6 miles of the river's North Fork and the lower 15 miles of the Omar River. BLM is now proceeding at the scoping level in order to obtain maximum public input on the study. Preliminary review of the draft EIS published by NPS in 1985 indicates potential issues may now include mineral development in the region, identification of transportation corridors, and subsistence lifeways in the area. Information received as a result of current scoping on this action will be used to update the NPS draft EIS and produce a new Squirrel River draft EIS.

DATES: Comments and requests to be placed on the mailing list will be accepted on or before January 31, 1994.

ADDRESSES: Comments and mailing requests should be sent to the District Manager, Kobuk District Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709-3844.

FOR FURTHER INFORMATION CONTACT: Susan Will (907) 474-2338 or Curtis Wilson (907) 272-5546.

Dated: December 21, 1993.

Gary Foreman,

Acting Manager, Kobuk District.

[FR Doc. 93-31746 Filed 12-28-93; 8:45 am]

BILLING CODE 4310-JA-P

[ES-960-4950-10-4600: ES-046620, Group 3, Washington, D.C.]

Filing of Plat of Dependent Resurvey and Survey of Restriction Line

The plat, in one sheet, of a portion of the boundary of U.S. Reservation No. 545, Washington, DC, has been officially filed in Eastern States, Springfield, Virginia, at 7:30 a.m., on December 15, 1993.

The survey was made upon request submitted by the National Park Service.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of \$4.00 per copy

Dated: December 15, 1993.

Carson W. Culp, Jr.,

State Director

[FR Dec. 93-31648 Filed 12-28-93; 8:45 am]

BILLING CODE 4310-GJ-M

[NV-930-4210-06; N-57922]

Public Meeting on Air Force Proposed Withdrawal Adjacent to Nellis Range Complex; Nevada

December 21, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule for a public meeting to be held on the Air Force's proposed withdrawal application N-57922. This meeting will provide an opportunity for public involvement in the proposed withdrawal processing. The purpose of the withdrawal is to ensure the public safety and the safe and secure operation of activities in the Nellis Range Complex.

FOR FURTHER INFORMATION CONTACT: Curtis Tucker, Area Manager, BLM Caliente, Caliente, Nevada 702-726-8100.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Withdrawal for the Air Force proposed withdrawal was published in the *Federal Register* on October 18, 1993, and a correction notice was published on November 5, 1993. The same notice was also published in the *Las Vegas Review Journal*.

A public meeting to gather information as to the proposed withdrawal will be held as follows:

Meeting address	Date	Time
VFW Hall, Caliente, Ne- vada.	January 31, 1994.	7-9 p.m. PST.

This meeting will be open to all interested persons, including those who desire to be heard in person and those who desire to submit written statements on the proposed withdrawal. Oral statements will be limited to 5 minutes. Written comments can also be submitted at the meeting.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 93-31747 Filed 12-28-93; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Reopening of Comment Period on the Draft Recovery Plan for the Moapa Dace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopening of comment period on the draft recovery plan for the Moapa dace (*Moapa coriacea*).

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period will be reopened on the draft revised recovery plan for the endangered Moapa dace (*Moapa coriacea*). The reopening of the comment period will allow comments on this plan to be submitted from all interested parties.

COMMENTS: Must be received by February 14, 1994, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, Nevada Ecological Services Field Office, 4600 Kietzke Lane, Building G-125, Reno, Nevada 89502-5093 (telephone: 702-784-5227). Written comments and materials regarding the plan should be addressed to Mr. David L. Harlow, Field Supervisor, at the above Reno, Nevada, address. Comments and materials received will be available on request for public inspection, by appointment, during normal business hours at the above Reno, Nevada, address.

FOR FURTHER INFORMATION CONTACT: Ms. Selena Werdon at the above Reno, Nevada, address (telephone: 702-784-5227).

SUPPLEMENTARY INFORMATION:

Background

Moapa dace are endemic to the Warm Springs area of the Muddy (Moapa) River system, Clark County, Nevada. Their historical range includes approximately 25 springs and 16 km of headwater tributary and main stem Muddy River habitat. Currently, Moapa dace are restricted to the upper 3 km of the Muddy River and five tributary spring systems. In 1987, the population was estimated at 2,800 individuals. The principle causes of decline for this species are habitat modification and non-native fish introductions. Recovery efforts will focus on maintaining and enhancing the existing population, rehabilitating historical habitats, and eliminating threats from non-native species. Historical habitat is currently public land administered by the Service and private lands.

The comment period on the draft recovery plan originally closed on December 6, 1993 (58 FR 51844). Written comments may now be submitted until February 14, 1994, to the above Reno, Nevada address.

Author

The author of this notice is Ms. Selena Weldon (See above Reno, Nevada, address (telephone: 702-784-5227)).

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 20, 1993.

William E. Martin,

Region 1, Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 93-31753 Filed 12-28-93; 8:45 am];
BILLING CODE 4310-55-M.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-351]

Certain Removable Hard Disk Cartridges and Products Containing Same; Commission Determination Not to Review an Initial Determination Adding One Respondent and Designating the Investigation "More Complicated"

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) adding one respondent and designating the above-captioned investigation "more complicated." The deadline for completion of this investigation is November 28, 1994.

FOR FURTHER INFORMATION CONTACT: Rachele R. Valente, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-3089.

SUPPLEMENTARY INFORMATION: On October 26, 1993, complainant Syquest Technology, Inc. filed a motion to amend the complaint and the notice of investigation to add one respondent, Iomega Corporation, and to designate the investigation more complicated. On October 28, 1993, respondent Nomai, S.A. responded to Syquest's motion, opposing the more complicated designation, but consenting to the addition of Iomega as a respondent, contingent upon adherence to the

existing hearing schedule. On October 29, 1993, the Commission investigative attorney filed a response in support of Syquest's motion. On November 1, 1993, the presiding ALJ issued an ID (Order No. 11) granting Syquest's motion.

Pursuant to Commission interim rule 210.59(a), a more complicated investigation refers to an investigation that is of an involved nature owing to the subject matter, difficulty in obtaining information, the large number of parties involved, or other significant factors. This investigation was designated more complicated owing to difficulties in obtaining information and complainant Syquest's need for more time to put on its case at the hearing.

No petitions for review of the ID 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 or will be 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.

Dated: December 21, 1993.

By order of the Commission:

Donna R. Koehnke,
Secretary.

[FR Doc. 93-31718 Filed 12-28-93; 8:45 am]
BILLING CODE 7020-02-P

[Investigations Nos. 731-TA-671-674 (Preliminary)]

Silicomanganese From Brazil, The People's Republic of China, Ukraine, and Venezuela; Import Investigation:

Determination

On the basis of the record developed in the subject investigations, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of imports

¹ The record is defined in §207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

from Brazil, the People's Republic of China, Ukraine, and Venezuela of silicomanganese (ferrosilicon manganese), provided for in subheading 7202.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On November 12, 1993, a petition was filed with the Commission and the Department of Commerce by Elkem Metals Company, Pittsburgh, PA, and the Oil, Chemical and Atomic Workers, Local 3-639, Belpre, OH, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela. Accordingly, effective November 12, 1993, the Commission instituted antidumping investigations Nos. 731-TA-671-674 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of November 23, 1993 (58 FR 61919). The conference was held in Washington, DC, on December 3, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 27, 1993. The views of the Commission are contained in USITC Publication 2714 (December 1993), entitled "Silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela; Investigations Nos. 731-TA-671-674 (Preliminary)."

Dated: December 23, 1993.

By order of the Commission:

Donna R. Koehnke,
Secretary.

[FR Doc. 93-31809 Filed 12-28-93; 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; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: Tosoh Corporation.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on December 21, 1993.

Copies of the initial determination, the settlement agreement, 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 individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the *Federal Register*. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

Issued: December 21, 1993.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 93-31719 Filed 12-28-93; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32411]

Transtar Holdings, L.P.—Corporate Family Exemption—Transtar, Inc.

Transtar Holdings, L.P. (Transtar Holdings), formerly known as Blackstone Transportation Partners L.P. (BTP), and Blackstone Capital Partners L.P. (BCP) have filed a notice of exemption for a transaction within their corporate family. The transaction was expected to be consummated on or after December 6, 1993.

The Commission previously exempted the control of Transtar, Inc. (Transtar), by BTP and BCP (collectively referred to as Blackstone) through ownership of 51% of its voting stock.¹ Transtar in turn controls eight carriers regulated by the Commission.² Blackstone plans to reorganize its holdings of Transtar's voting stock. BCP will transfer its voting shares of Transtar (24.9%) to Transtar Holdings, BTP will be renamed Transtar Holdings and then Transtar Holdings will hold the 51% of Transtar's voting stock.

A new corporation will be formed, Blackstone Transportation Company, Inc. (Blackstone Transportation), which will become the general partner of BTP, replacing Blackstone Management Associates L.P. (BMA). Blackstone Transportation's sole shareholders are Peter G. Peterson, Stephen A. Schwarzman, David A. Stockman, James R. Birle, Lawrence D. Fink, and James Mossman, who were the same general partners of BMA.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The transaction will not result in adverse changes in service levels, significant operational changes, or change in the competitive balance with carriers outside applicants' corporate family. The purpose of the transaction is to consolidate Blackstone's holdings in Transtar into one partnership, Transtar Holdings. This restructuring will facilitate a series of transactions that will effect: (i) A substantial reduction of

¹ See Finance Docket No. 31363, Blackstone Capital Partners L.P., Blackstone Transportation Partners L.P. and USX Corporation—Exemption From 49 U.S.C. 10746, 11321, and 11343, (not printed) served December 23, 1988.

² The Commission granted an exemption for the acquisition of control of the following carriers: Bessemer & Lake Erie Railroad Company; Birmingham Southern Railroad Company; Duluth, Missabe & Iron Range Railway Company; Elgin, Joliet & Eastern Railway Company; Lake Terminal Railroad Company; and Warrior & Gulf Navigation Union Railroad Company.

the interest rate payable with respect to Transtar's long term debt; (ii) the repayment of Transtar's 13¾% Junior Subordinated Payment-In-Kind notes held by USX; and (iii) the issuance by Transtar Holdings of senior discount notes, which senior discount notes will not be an obligation of, or guaranteed by, Transtar.

To ensure that all employees who may be affected by the transaction are given the protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Anne D. Smith, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

Decided: December 21, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-31811 Filed 12-28-93; 8:45 am]

BILLING CODE 7035-01-P

[Docket No. AB-290 (Sub-No. 128X)]

Norfolk Southern Railway Co. Abandonment Exemption; Between Brickdale and Greenwood, in Greenwood County, SC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by Norfolk Southern Railway Company of its Brickdale-Greenwood line in Greenwood County, SC. The 17.9-mile line is located between milepost V-71.0 in Brickdale, SC, and milepost new V-86.6 in Greenwood, SC, and milepost V-80.1 and milepost old V-82.4, in Greenwood. The exemption is subject to historical and standard employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 28, 1994. Formal expressions of intent to file an offer of financial assistance

¹ See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

under 49 CFR 1152.27(c)(2) must be filed by January 8, 1994, petitions to stay must be filed by January 13, 1994, and petitions for reconsideration must be filed January 24, 1994. Requests for a public use condition must be filed by January 18, 1994.

ADDRESSES: Send pleadings referring to Docket No. AB-290 (Sub-No. 128X) to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and (2) Robert J. Cooney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191.

FOR FURTHER INFORMATION CONTACT: Richard Felder (202) 927-5610. [TDD for the hearing impaired (202) 927-5721.]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927-5721].

Decided: December 20, 1993.

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

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 93-31810 Filed 12-28-93; 8:45 am]
BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Barton J. Adams, D.O.; Revocation of Registration

On March 18, 1993, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Barton J. Adams, D.O., 261 Lalo Street, Kahului, Hawaii, proposing to revoke his DEA Certificate of Registration, AA2833641, and to deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Adams' lack of authorization to handle controlled substances in the State of Hawaii. 21 U.S.C. 824(a)(3).

A returned registered mail receipt indicates that the Order to Show Cause was received on March 30, 1993. More than thirty days have passed since the Order to Show Cause was received and

the Drug Enforcement Administration has received no response thereto. Therefore, the Acting Administrator concludes that Dr. Adams has waived his opportunity for a hearing on the issues raised in the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based on the information contained in the DEA investigative file.

The Acting Administrator finds that in 1984, Dr. Adams was licensed as an osteopathic physician by the Hawaii Board of Osteopathic Examiners. On March 29, 1990, Dr. Adams sexually assaulted a patient. Criminal proceedings were filed in the Circuit Court of the Second Circuit, State of Hawaii. On January 30, 1992, a jury returned a guilty verdict on three counts of sexual assault in the second degree in violation of HRS Section 707-731(1)(a). On May 7, 1992, Dr. Adams was sentenced to ten years incarceration and a psychological evaluation.

As a result of the conviction and other allegations of sexual assault, the Hawaii Department of Commerce and Consumer Affairs filed an Ex Parte Motion for Summary Suspension and a Petition for Disciplinary Action against Dr. Adams. On February 24, 1992, Dr. Adams' medical license was summarily suspended by the Hawaii Board of Osteopathic Examiners (Board). On May 15, 1992, a hearing was held by the Board. At the conclusion of the hearing, the board issued an Interim Order in which it temporarily revoked Dr. Adams' medical license. On July 10, 1992, the Board issued its Findings of Fact, Conclusions of Law and Final Order and revoked Dr. Adams' medical license.

The Acting Administrator additionally finds that on June 30, 1992, Dr. Adams' state controlled substance registration expired. The Acting Administrator concludes that DEA does not have the statutory authority under the Controlled Substances Act to maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 21 U.S.C. 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *Steven K. Campbell, M.D.*, 57 FR 56512 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988); *Robert F. Witek, D.D.S.*, 52 FR 47770 (1987) and cases cited therein.

The Acting Administrator further finds that as a result of Dr. Adams' conviction, on February 23, 1993, the Office of the Inspector General, United States Department of Health and Human Services, excluded Dr. Adams from participation in the Medicare program

for a period of ten years pursuant to 42 U.S.C. 1320a-7(a). Such exclusion provides a second statutory basis for the revocation of Dr. Adams' DEA registration. 21 U.S.C. 824(a)(5); *Nelson Ramirez-Gonzalez, M.D.*, 58 FR 52787 (1993).

Having considered the facts and circumstances in this matter, the Acting Administrator concludes that Dr. Adams' DEA Certificate of Registration should be revoked due to his lack of authorization to handle controlled substances in the State of Hawaii and his exclusion from the Medicare program.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AA2833641, previously issued to Barton J. Adams, D.O, be, and it hereby is, revoked. The Acting Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective January 28, 1994.

Dated: December 21, 1993.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 93-31827 Filed 12-28-93; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-26,798]

Hermitage Hospital Products A/K/A Keilei International, Niantic, Connecticut; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 20, 1993, applicable to all workers of Hermitage Hospital Products, Niantic, Connecticut. The certification notice was published in the *Federal Register* on November 9, 1993 (58 FR 59490).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that Hermitage Hospital Products was purchased by Keilei International and meets all the requirements of a successor-in-interest firm.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The amended notice applicable to TA-W-28,798 is hereby issued as follows:

All workers of Hermitage Hospital Products, Niantic, Connecticut, also known as (a/k/a) Keilei International, Niantic, Connecticut, who became totally or partially separated from employment on or after June 9, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this December 20, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-31657 Filed 12-28-93; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Fee Adjustments for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of fee adjustments.

SUMMARY: This notice revises the Mine Safety and Health Administration's (MSHA) user fees for testing, evaluation, and approval of certain products

manufactured for use in underground mines. These fees are based on fiscal year 1993 data and reflect changes in approval processing operations as well as costs incurred to process approval actions.

DATES: These fee schedules are effective from January 1, 1994 through December 31, 1994. Approval applications postmarked before January 1, 1994 will be chargeable under the fee schedules as published on December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Peter M. Turcic, Chief, Approval and Certification Center, R.R. 1, Box 251, Triadelphia, West Virginia 26059.

SUPPLEMENTARY INFORMATION: In general, MSHA has computed the revised fees based on the cost to the government to provide testing, evaluation, and approval of products manufactured for use in underground mines. On May 8, 1987 (52 FR 17506), MSHA published a final rule, 30 CFR Part 5—Fees for Testing, Evaluation, and Approval of Mining Products, which established the specific procedures for fee calculation, administration, and revisions. This revised fee schedule is established in accordance with the procedures of that rule.

The final rules for 30 CFR part 7, Subpart J—Electric Motor Assemblies and Subpart K—Electric Cables, Signaling Cables and Cable Splice Kits were issued February 22, 1993. Subpart

J has a 3-year phase-in period. Subpart K has a 1-year phase-in period; therefore, applications for electric cables, signaling cables and cable splice kits postmarked after February 22, 1994, must be submitted under part 7.

Fees under part 18, action codes 47 and 48, Permit for Extension of Time and Permit Modification, represent programs previously in effect under action code 26, Permits. These have been separated to reflect the difference in expended time and cost. Action code 47 is subject to a flat rate and action code 48 is subject to an hourly rate.

A new approval program being introduced during fiscal year 1994 is Material Acceptance. This acceptance is subject to an hourly rate and is included under the schedule for part 75, action code 15.

Under the provisions of part 5, one approval area has been converted from an hourly rate to a flat rate: Dust Collector Approval with Certification of Performance. All flat rate approvals require payment to the MSHA Division of Finance, P.O. Box 25367, Denver, CO 80225, at the time of application submittal to the MSHA Approval and Certification Center.

Dated: December 22, 1993.

Richard L. Brechbiel,

Acting Assistant Secretary Mine Safety and Health.

FEE SCHEDULE EFFECTIVE JANUARY 1, 1994

(Based on FY 1993 data)

Action title	Hourly rate	Flat rate	Application fee
30 CFR Part 7—Product Testing by Third Party:			
12 Approval Evaluation—Battery Assemblies	\$40		\$100
12 Approval Evaluation—Brattice and Ventilation Tubing	46		100
12 Approval Evaluation—Multiple-Shot Blasting Units	40		100
12 Approval Evaluation—Electric Motor Assemblies ¹	40		100
12 Approval Evaluation—Electric Cables and Splice Kits ²	46		100
14 Approval Extension—Batteries Assemblies	40		100
14 Approval Extension—Brattice and Ventilation Tubing	43		100
14 Approval Extension—Multiple-Shot Blasting Units	40		100
14 Approval Extension—Electric Motor Assemblies ¹	40		100
14 Approval Extension—Electric Cables and Splice Kits ²	43		100
40 Stamped Notification Acceptance Program (SNAP)		\$258	
30 CFR Part 15—Explosives:			
12 Approval Evaluation ³	44		100
Permissibility Tests for Explosives:			
Weigh-in		420	
Physical Exam: First size		295	
Chemical Analysis		1,797	
Air Gap—Minimum Product Firing Temperature		418	
Air Gap—Room Temperature		320	
Pendulum Friction Test		148	
Detonation Rate		320	
Gallery Test 7		6,760	
Gallery Test 8		5,030	
Toxic Gases (Large Chamber)		732	
Permissibility Tests for Sheathed Explosives:			
Physical Examination		128	
Chemical Analysis		1,044	
Gallery Test 9		1,944	

FEE SCHEDULE EFFECTIVE JANUARY 1, 1994—Continued

[Based on FY 1993 data]

Action title	Hourly rate	Flat rate	Application fee
Gallery Test 10		1,944	
Gallery Test 11		1,944	
Gallery Test 12		1,944	
Drop Test		648	
Temperature Effects/Detonation		672	
Toxic Gases		580	
14 Approval Extension	44		100
30 CFR Part 18—Electric Motor Driven Equipment and Accessories:			
12 Approval—Machine Evaluation ³	45		100
Approval—Machine Testing:			
Explosion Test	37		
Surface/Temperature Test	34		
Impact Test	38		
Thermal Shock Test	38		
Product Flame Test	45		
12 Approval—Instrument (testing included)	45		100
14 Approval Extension—Machine Evaluation ³	45		100
Approval Extension—Machine Testing:			
Explosion Test	37		
Surface/Temperature Test	34		
Impact Test	38		
Thermal Shock Test	38		
Product Flame Test	45		
14 Approval Extension—Instruments (testing included)	45		100
15 Acceptance Evaluation ^{2, 3}	43		100
Acceptance Testing:			
Explosion Test	37		
Wall Thickness Test	44		
Surface/Temperature Test	34		
Impact Test	38		
Thermal Shock Test	38		
Product Flame Test	45		
Cable/Splice Test	44		
Cable Flame Test	45		
Dielectric Test	48		
Compressibility Test (asbestos substitutes)	48		
16 Certification Evaluation ³	40		100
Certification Testing:			
Explosion Test	37		
Surface/Temperature Test	34		
Impact Test	38		
Thermal Shock Test	38		
Product Flame Test	45		
17 Acceptance Extension ^{2, 3}	42		100
Cable Flame Test	45		
Product Flame Test	45		
Cable/Splice Test	44		
18 Certification Extension ³	39		100
Certification Extension Testing:			
Explosion Test	37		
Surface/Temperature Test	34		
Impact Test	38		
Thermal Shock Test	38		
Product Flame Test	45		
21 Field Modification	47		100
23 Field Approval		152	
26 Permit—Machines ³	47		100
Permit Testing:			
Explosion Test	37		
Surface/Temperature Test	34		
Impact Test	38		
Thermal Shock Test	38		
Product Flame Test	45		
26 Permit—Instruments (testing included)	47		100
30 Intrinsic Safety Determination (testing included)	47		100
31 Intrinsic Safety Determination Extension (testing included)	44		100
32 Simplified Certification ³	40		100
Simplified Certification Testing:			
Explosion Test	37		
Surface/Temperature Test	34		

FEE SCHEDULE EFFECTIVE JANUARY 1, 1994—Continued

[Based on FY 1993 data]

Action title	Hourly rate	Flat rate	Application fee
Impact Test	38		
Thermal Shock Test	38		
Product Flame Test	45		
34 Simplified Certification Extension ³	40		100
Simplified Certification Extension Testing:			
Explosion Test	37		
Surface/Temperature Test	34		
Impact Test	38		
Thermal Shock Test	38		
Product Flame Test	45		
40 Stamped Notification Acceptance Program (SNAP)		258	
41 Longwall Approval	46		100
42 Longwall Approval Extension	46		100
45 Shearer Evaluation	48		100
46 Shearer Evaluation Extension	47		100
47 Permit—Extension of Time		87	
48 Permit Modification—Machine	47		100
48 Permit Modification—Instrument (testing included)	47		100
30 CFR Part 19—Electric Cap Lamps:			
12 Approval (testing included)	43		100
14 Approval Extension (testing included)	41		100
40 Stamped Notification Acceptance Program (SNAP)		258	
30 CFR Part 20—Electric Mine Lamps:			
12 Approval (testing included)	45		100
14 Approval Extension (testing included)	42		100
40 Stamped Notification Acceptance Program (SNAP)		258	
30 CFR Part 21—Flame Safety Lamps:			
12 Approval (testing included)	44		100
14 Approval Extension (testing included)	44		100
40 Stamped Notification Acceptance Program (SNAP)		258	
30 CFR Part 22—Portable Methane Detectors:			
12 Approval (testing included)	49		100
14 Approval Extension (testing included)	46		100
40 Stamped Notification Acceptance Program (SNAP)		258	
30 CFR Part 23—Telephones and Signaling Devices:			
12 Approval (testing included)	46		100
14 Approval Extension (testing included)	46		100
40 Stamped Notification Acceptance Program (SNAP)		258	
30 CFR Part 24—Single-shot Blasting Units:			
12 Approval (testing included)	47		100
14 Approval Extension (testing included)	47		100
40 Stamped Notification Acceptance Program (SNAP)		258	
30 CFR Part 26—Lighting Equipment for Illumination:			
12 Approval (testing included)	47		100
14 Approval Extension (testing included)	47		100
40 Stamped Notification Acceptance Program (SNAP)		258	
30 CFR Part 27—Methane Monitoring Systems:			
16 Certification (testing included)	47		100
18 Certification Extension (testing included)	47		100
40 Stamped Notification Acceptance Program (SNAP)		258	
30 CFR Part 28—D.C. Current Fuses:			
12 Approval (testing included)	48		100
14 Approval Extension (testing included)	48		100
40 Stamped Notification Acceptance Program (SNAP)		258	
30 CFR Part 29—Portable Dust Analyzers and Methane Monitors:			
12 Approval	44		100
14 Approval Extension	44		100
40 Stamped Notification Acceptance Program (SNAP)		258	
30 CFR Part 31—Diesel Mine Locomotives:			
12 Approval	44		100
14 Approval Extension	44		100
30 CFR Part 32—Mobile Diesel-powered Equipment for Noncoal Mines			
12 Approval	44		100
14 Approval Extension	44		100
16 Certification Evaluation ³	45		100
Certification Testing:			
Emissions Test	46		
Pre/Post Test Preparation	45		
18 Certification Extension Evaluation ³	44		100

FEE SCHEDULE EFFECTIVE JANUARY 1, 1994—Continued

[Based on FY 1993 data]

Action title	Hourly rate	Flat rate	Application fee
Certification Extension Testing:			
Emissions Test	46		
Pre/Post Test Preparation	45		
30 CFR Part 33—Dust Collectors:			
12 Approval Evaluation without Cert. of Performance ³	45		100
Approval Testing:			
Dust Collector Test	49		
14 Approval Extension Evaluation ³	45		100
Approval Extension Testing:			
Dust Collector Test	49		
16 Certification Evaluation ³	47		100
Certification Testing:			
Dust Collector Test	49		
18 Certification Extension ³	47		100
Certification Extension Testing:			
Dust Collector Test	49		
21 Field Modification	49		100
29 Dust Collector Approval with Cert. of Performance		170	
40 Stamped Notification Acceptance Program (SNAP)		258	
30 CFR Part 35—Fire-Resistant Hydraulic Fluids:			
12 Approval (testing included)	43		100
14 Approval Extension (testing included)	42		100
30 CFR Part 36—Mobile Diesel-Powered Equipment:			
12 Approval	46		100
14 Approval Extension	46		100
16 Certification—Engine Evaluation ³	44		100
Certification—Engine Testing:			
Emissions Test	46		
Explosion Test	48		
Surface Temperature/Safety Controls Test	47		
Pre/Post Test Preparation	44		
18 Certification Extension—Engine Evaluation ³	44		100
Certification Extension—Engine Testing:			
Emissions Test	46		
Explosion Test	48		
Surface Temperature/Safety Controls Test	47		
Pre/Post Test Preparation	44		
21 Field Modification	48		100
27 Certification—Diesel Components Evaluation ³	45		100
Certification—Diesel Components Testing:			
Emission Test	46		
Explosion Test	48		
Water Consumption/Cooling Efficiency Test	50		
Surface Temperature	47		
Safety Control Test	47		
Pre/Post Test Preparation	44		
28 Certification Extension—Diesel Components Evaluation ³	45		100
Certification Extension—Diesel Components Testing:			
Emission Test	46		
Explosion Test	48		
Water Consumption/Cooling Efficiency Test	50		
Surface Temperature	47		
Safety Control Test	47		
Pre/Post Test Preparation	44		
40 Stamped Notification Acceptance Program (SNAP)		258	
30 CFR Part 74—Coal Mine Dust Personal Sampler Units:			
12 Approval	44		100
00 Other A&CC Services:			
15 Acceptance—Overcurrent Relays (testing included)	44		100
15 Statement of Test and Evaluation (ST&E)		40	
15 Material Acceptance (testing included)	44		100
15 Monitor and Power System (MAPS) (testing included)	44		100
15 Acceptance—Ground Check Monitor/Ground Wire Devices (testing included)	44		100
17 Acceptance Extension—Overcurrent Relays	44		100
17 Acceptance Extension—Interim Criteria	42		100
17 Statement of Test and Evaluation (ST&E) Extension		40	
17 Material Acceptance Extension (testing included)	44		100
17 Acceptance Extension—Ground Check Monitor/Ground Wire Devices	44		100
20 Stamped Revision Acceptance (SRA) ⁴		227	
24 Acceptance—Panic Bar	44		100

FEE SCHEDULE EFFECTIVE JANUARY 1, 1994—Continued

[Based on FY 1993 data]

Action title	Hourly rate	Flat rate	Application fee
33 Generic Statement of Test and Evaluation (ST&E)	43	.....	100
35 Administration Records Update	10	.....	NONE
37 Acceptance—Interim Criteria ³	42	.....	100
Interim Criteria Testing:			
Product Flame Test	45	.....	.....
40 Stamped Notification Acceptance program (SNAP)—Ground Check Monitor/Ground Wire Device/Overcurrent Relay		258	.....
40 Stamped Notification Acceptance Program (SNAP) ST&E		34	.....
41 Approval—Longwall Area Lighting	45	.....	100
42 Approval Extension—Longwall Area Lighting	44	.....	100
50 Mine Wide Monitoring System (MWMS) Evaluation		307	.....
52 Mine Wide Monitoring System (MWMS) Barrier Classification		114	.....
54 Mine Wide Monitoring System (MWMS) Sensor Classification		271	.....
00 Retesting for Approval as a Result of Post-Approval Product Audit ⁵ .....			.....

¹ Electric motor assemblies final rule was issued February 22, 1993. The phase-in period for this program is 3 years.

² Applications for electric cables, signaling cables, and splice kits postmarked after February 22, 1994, must be submitted under 30 CFR, Part 7—Third Party Testing. Applicable fees are listed under the part 7 fee schedule.

³ Full approval fee consists of evaluation cost plus applicable test costs.

⁴ Fee covers SRA application accompanied by up to five documents.

⁵ Fee based upon the approval schedule in effect at the time of retest.

NOTE: When testing and evaluation are required at locations other than MSHA's premises, the applicant shall reimburse MSHA for traveling, subsistence, and incidental expenses of MSHA's representation in accordance with standardized government travel regulations. This reimbursement is in addition to the fees charged for evaluation and testing.

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Pension and Welfare Benefits Administration

[Application No. D-9460, et al.]

Proposed Exemptions; G. Robert Taylor Individual Retirement Account, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the

exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

G. Robert Taylor Individual Retirement Account (the Account) Located in Chattanooga, Tennessee

[Application No. D-9460]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the

application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash of certain shares of stock from the Account to R. Scott Taylor, a disqualified person with respect to the Account, provided that the following conditions are met:

1. The fair market value of the stock is established by an appraiser independent of G. Robert Taylor (Taylor);
2. The buyer pays no less than current fair market value for the stock;
3. The transaction is entirely for cash; and
4. The Account pays no fees or commissions in regard to the sale.

Summary of Facts and Representations

1. The Account was established in March 1987 for the benefit of Taylor. The custodian for the Account is Merrill Lynch, Pierce, Fenner & Smith. The Account was initially funded with rollover proceeds from a qualified profit sharing plan in the amount of \$271,484. Taylor also made a cash contribution of \$1,216 to the Account at that time. All the assets of the Account were subsequently used to purchase 27,270 shares of common stock of the Bank of Cleveland, Tennessee (the Bank) at a price of \$10 per share.

2. The shares of the Bank were acquired in June 1987 when the Bank was organized. The purchase of Bank stock by the Account originally accounted for 9.4 percent of the total outstanding shares of the Bank. Taylor was one of the organizers of the Bank and has held the position of chairman and chief executive officer of the Bank since the time of its formation.¹

In January 1989, the shares of Bank stock held by the Account were exchanged in a tax-free reorganization for an equal number of shares of Bradley County Financial Corporation, a one bank holding company (the Holding Company) which became the parent company of the Bank. The shares of Holding Company stock held by the Account currently account for 7.5 percent of the total Holding Company shares outstanding. The applicant represents that 70.5 percent of the total shares outstanding of the Holding Company are held by investors unrelated to Taylor. Taylor is presently the chairman of the Holding Company.

¹ The Department notes that, in proposing this exemption for the sale of the Bank stock by the Account, it is expressing no opinion concerning whether the past acquisition of such stock violated the provisions of any other law. In particular, we are not ruling on the interpretation or application of the exclusive benefit rule under section 408(a) of the Internal Revenue Code. The Internal Revenue Service has sole responsibility for that section.

3. Taylor obtained an appraisal dated April 12, 1993, on the Holding Company stock from Casey M. Stuart of Hazlett, Lewis and Bieter (the Appraiser), a firm of certified public accountants located in Chattanooga. The applicant represents that the Appraiser is independent of Taylor and the Holding Company, except for an annual audit of the Holding Company which represents under one percent of the Appraiser's business. According to the Appraiser, there is no established market for the Holding Company stock. The Appraiser considered, among other factors, capitalization of earnings, capitalization of book value, and recent sales of stock of the Holding Company. Accordingly, the Appraiser estimated that, as of the date of the appraisal, the Holding Company stock had a fair market value of \$24 per share.

4. The Holding Company stock is not widely traded and currently produces no income for the Account. Taylor proposes to have the Account sell the shares to his son, R. Scott Taylor. The buyer will pay no less than the fair market value of the Holding Company stock at the time of sale, based on an updated independent appraisal. The transaction will be entirely for cash, and the Account will pay no fees or commissions in regard to the sale. The Account will reinvest the proceeds of the sale in income producing assets.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 4975(c)(2) of the Code because:

- (1) The Holding Company stock is not liquid and currently produces no income;
- (2) the buyer will pay no less than current fair market value for the stock, based on an updated independent appraisal;
- (3) the sale will be entirely for cash;
- (4) the Account will pay no fees or commissions in connection with the transaction; and
- (5) the proceeds of the sale will be reinvested in assets which produce income for the Account.

FOR FURTHER INFORMATION CONTACT: Paul Kelly of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

General Motors Hourly-Rate Employees Pension Plan; and the General Motors Retirement Program for Salaried Employees (together, the Plans) Located in New York, New York

[Application Nos. D-8402 and D-8405]

Proposed Exemption

The Department is considering granting an exemption under the

authority of section 408(a) of the Act and section 4975(c)(2) of the Code in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Section I—Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions if the conditions set forth in Section II below are met:

(a) The acquisition or sale of a net profits interest (NPI), a royalty interest (Royalty), or a production payment contract (Production Payment), in oil and gas properties (the Properties), between the Plans and oil and gas companies or their affiliates that are parties in interest with respect to the Plans (collectively, the Companies);

(b) any loan by the Plans to the Companies where such loans are secured by interests in the Properties, including loans with conversion rights to acquire a NPI, Royalty, or Production Payment in the Properties;

(c) The acquisition or sale between the Plans and the Companies of any stock, or debt securities which are convertible into such stock, issued by the Companies (Company Securities); and

(d) The acquisition or sale between the Plans and the Companies of any interests in certain limited partnerships which invest in such Properties where the Company is a general partner and/or operating owner for the Properties (Company Partnership Interest), or interests in certain joint ventures which invest in such Properties where the Company is a joint venturer and/or operating owner for the Properties (Company Venture Interest).

Section II—Conditions

(a) A "qualified oil and gas investment manager" (as defined below) fully reviews each transaction before recommending the transaction to the Pension Investment Committee of General Motors Corporation (the PIC) or, as of December 1, 1992, to the General Motors Investment Management Corporation (GIMMCo), fiduciaries of the Plans. The decision to enter into the transaction is made by the PIC or GIMMCo, which retains final approval authority over the transaction. The "qualified oil and gas investment manager" negotiates the transaction and manages the oil and gas investments for the Plans, in its capacity as a fiduciary for the Plans, and monitors all

transactions on behalf of the Plans in order to take any appropriate action necessary to safeguard the interests of the Plans.

(b) The Companies and their affiliates are independent of and unrelated to:

- (i) The General Motors Corporation (GMC);
- (ii) Any person directly or indirectly controlling, controlled by, or under common control with GMC;
- (iii) Any officer or director of GMC or any of its subsidiaries or affiliated companies;
- (iv) Any partnership in which GMC is a 10 percent or more (directly or indirectly in capital or profits) partner; and
- (v) Any "qualified oil and gas investment manager" which acts for the Plans with respect to an oil and gas transaction covered by the proposed exemption, or any other person who exercises discretionary authority, responsibility or control or who provides investment advice for the investment of the Plans' assets involved in oil and gas transactions.

(c) In any transaction where the Plans acquire a NPI, Royalty, Production Payment, Company Security, Company Partnership Interest, or Company Venture Interest from the Companies, the Plans pay a purchase price which is no greater than the fair market value of such interests or securities based on an appraisal developed by the Plans' fiduciaries or an independent, qualified appraiser selected by the Plans' fiduciaries.

(d) In any transaction where the Plans sell a NPI, Royalty, Production Payment, Company Security, Company Partnership Interest, or Company Venture Interest to the Companies, the Plans receive a price which is no less than the fair market value of such interests or securities based on an appraisal developed by the Plans' fiduciaries or an independent, qualified appraiser selected by the Plans' fiduciaries.

(e) In instances involving the acquisition of the Properties by a Company from a third party with a simultaneous sale of a NPI, Royalty, or Production Payment by the Company to the Plans, the Plans pay a purchase price which reflects the fair market value of the interest as agreed to by the Plans' fiduciaries in arm's-length negotiations directly involving the Plans, the Company, and the third party seller.

(f) In instances involving the sale of a NPI, Royalty, or Production Payment by the Plans to a Company in connection with the Company's simultaneous sale of a WI in the

Properties to a third party, the Plans receive a sales price which reflects the fair market value of the interest as agreed to by the Plans' fiduciaries in arm's-length negotiations directly involving the Plans, the Company, and the third party buyer.

(g) In any loan by the Plans to a Company in connection with an oil and gas investment, the Plans obtain terms which include: (i) an interest rate that is commensurate with the prevailing market rate for such loans at the time of the transaction, as determined by the Plans' fiduciaries in accordance with rates quoted by established commercial lenders offering similar loans; and (ii) a security interest in designated oil and gas investment interests in the Properties, which have a fair market value that equals at least 150% of the amount loaned by the Plans throughout the duration of such loan, based on an appraisal of such interests developed by the Plans' fiduciaries or by an independent, qualified appraiser selected by the Plans' fiduciaries.

(h) All other terms of each such transaction are not less favorable to the Plans than the terms generally available in an arm's-length transaction between unrelated parties.

(i) The amount of each Plan's total assets involved in all transactions with the Companies represents no more than three percent (3%) of such Plan's total assets as of the date of approval of each transaction by the PIC or GMIMCo.

(j) No investment management fee, advisory fee, underwriting fee, brokerage or sales commission, or similar compensation is paid to the Companies by the Plans with regard to the transactions.

(k) GMC maintains for the duration of each transaction and for six years thereafter records necessary to enable persons described below in subsection (l) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of GMC or an affiliate, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest, other than GMC and its affiliates, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by subsection (l) below; and

(l)(1) Except as provided in subsection (l)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in subsection (k) are unconditionally

available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service, and

(ii) Any participant or beneficiary of the Plans or duly authorized representative of such participant or beneficiary.

(2) None of the persons described in subsection (l)(1)(ii) shall be authorized to examine trade secrets of the Companies or any commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this proposed exemption:

(a) The term "Company" means a publicly or privately owned oil and gas exploration, development and operating company or partnership which is independent of and unrelated to GMC, its affiliates, and various Plan fiduciaries described in Section II(a) above.

(b) The term "affiliate" of a Company means any entity directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Company.

(c) The term "control," for purposes of the above definition, means the power to exercise a controlling influence over the management or policies of an entity.

(d) The term "qualified oil and gas investment manager" means a fiduciary as defined in section 3(21) of the Act which: (i) Is independent of and unrelated to any of the Companies and their affiliates (as defined above); (ii) is a financial institution or business organization that in the normal course of business advises institutional investors regarding oil and gas investments; (iii) acknowledges in writing to the Plans that it will manage specific oil and gas investments on behalf of the Plans, in its capacity as a fiduciary of the Plans, as designated by the PIC or GMIMCo; and (iv) satisfies the definition of "qualified professional asset manager" (QPAM) under Section V(a) of Prohibited Transaction Exemption 84-14 (PTE 84-14, 49 FR 9494, March 13, 1984), except for the fact that either the PIC or GMIMCo retains final approval authority for all oil and gas investments recommended by such fiduciary.

(e) The term "Property" or "Properties" means any oil and gas properties such as long-term leasehold interests in oil and gas producing fields and the oil and gas in place on the properties. Such "Property" may

include an interest in the oil and gas wells, platforms, wellheads, piping, as well as the gas gathering system or processing facility through which gas produced from the wells is either transported to the gas pipeline for shipment to various end users or treated before delivery to the end users.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective May 8, 1990.

TEMPORARY NATURE OF EXEMPTION: This proposed exemption, if granted, will be effective for all transactions described herein which have been entered into by the Plans and the Companies since May 8, 1990. However, this proposed exemption will not apply to any transactions which are entered into with the Companies after five years from the date on which the Final Grant of this proposed exemption is published in the Federal Register.

Summary of Facts and Representations

1. The Plans were established by GMC to provide retirement benefits for eligible hourly and salaried employees of GMC and its affiliates. The aggregate fair market value of the assets of the Plans was approximately \$34.5 billion, as of November 30, 1992. The Plans covered a total of approximately 821,169 active and retired participants, as of June 30, 1992.

Bankers Trust Company of New York (Bankers Trust) is the trustee of each of the Plans. Bankers Trust has no discretionary authority over the investment management of the assets held in the Plans relating to the subject transactions.

2. Prior to December 1, 1992, the Finance Committee of the Board of Directors of GMC (the Finance Committee), as named fiduciary of the Plans, delegated to the PIC the responsibility for allocating funds among trustees and investment managers, determining asset mix in accordance with the broad investment guidelines established by the Finance Committee, and overseeing in-house investing for a portion of the assets of the Plans. The PIC is comprised of officers of GMC, all of whom are independent of the Companies. However, as of December 1, 1992, the PIC delegated various duties and responsibilities to GMIMCo, a wholly-owned subsidiary of GMC. GMIMCo is a registered investment adviser under the Investment Advisers Act of 1940 which now has overall responsibility for managing investments for the assets of the Plans, recommending to the PIC certain asset allocation changes and investment policy guidelines,

appointing and terminating external investment managers, allocating assets among investment managers, and engaging in private market investment transactions and related public securities (including all oil and gas investments made by the Plans).

3. The applicant represents that the PIC decided in 1988 to allocate a certain portion of the assets of the Plans to oil and gas investments, particularly through the acquisition of NPIs or Royalties in certain Properties from the Companies.² In both instances, the Companies would be the owner of a working interest (i.e. WI) in the Properties.³ The applicant states that the Companies are or would become parties in interest with respect to the Plans as a result of the NPI investments (see Item #9 below).

4. On September 12, 1988, RPI Institutional Services, Inc. (RPI) was appointed by the PIC to serve as the initial "qualified oil and gas investment manager" for the Plans pursuant to the terms of an investment management agreement (the Agreement). RPI is an experienced oil and gas investment manager providing a full range of services to various institutional investors, including employee benefit plans. The applicant states that RPI is unrelated to, and independent of, any of the Companies.

Under the Agreement, RPI reviewed and recommended oil and gas investments to the PIC, prior to December 1, 1992. RPI currently performs such functions for GMIMCo which, as the PIC's delegate within GMC's in-house investment staff, retains final approval authority for any oil and gas investments proposed by RPI. RPI retains qualified professional engineers to review the investments, prepares financial projections on the expected rate of return, and reviews the reputation and financial strength of the parties involved in the investment. The applicant states that either RPI or another qualified, independent appraiser chosen by RPI, appraises the fair market value of the underlying Properties as well as the NPI, Royalty, or Production Payment involved prior to RPI's recommendation of the investment

² A NPI is a non-operating interest entitling the owner to a share of the gross production from an oil and gas property measured by the net profits derived from such property. A Royalty is a similar interest which entitles the owner to a percentage of gross profits derived from the property.

³ A working interest or WI is a leasehold, operating, or cost-bearing interest in an oil and gas property under which the owner bears all costs and receives all revenues, net of taxes and those revenues payable to nonoperating interests.

to GMIMCo.⁴ In addition, if the proposed investment is approved by the GMIMCo, RPI negotiates the structure, terms and conditions of the proposed investment, and manages the investment on behalf of the Plans.

The applicant represents that RPI does not satisfy the definition of a QPAM under PTE 84-14 because either the PIC or GMIMCo has retained final approval authority for all oil and gas investments recommended by RPI. Further, the assets of the Plans managed by RPI represent more than 20% of RPI's total assets under management (see Part I(e) of PTE 84-14). Therefore, the relief provided in PTE 84-14 is unavailable for transactions engaged in by RPI on behalf of the Plans. The applicant states that GMIMCo may appoint other "qualified oil and gas investment managers" in the future which, like RPI, would not meet the requirements of PTE 84-14 but which would be engaged under agreements with terms and conditions similar to the Agreement (see Item #12 below).

5. The Companies, including any affiliates thereof, are either publicly or privately owned oil and gas exploration, development and operating companies or partnerships which are independent of and unrelated to GMC and its affiliates. As the WI owner of the Properties in which the Plans acquire a NPI, Royalty, or Production Payment, the Companies are obligated to pay all of the costs, as well as operate, supervise and maintain the production of oil and gas from the Properties. The Companies calculate the amount of net income for the NPI or gross income for the Royalty or Production Payment to be received by the Plans, subject to review by RPI. In managing the investment for the Plans, RPI monitors the oil and gas production from the Properties as well as the marketing of all oil and gas products by the Companies. RPI reviews each Company's calculation of the net income for the NPI or gross income for the Royalty or Production Payment. With respect to the Plans' NPI investment, RPI has certain oversight responsibilities regarding the operation of the Properties by the Companies, such as decisions which are made by a Company to increase oil and gas production from a particular Property. RPI monitors a Company's operating decisions through its normal ongoing due diligence review of the Company's activities on behalf of the Plans. RPI can negotiate changes in the Company's

⁴ The applicant states that all services performed by RPI for the Plans and fees paid by the Plans for such services satisfy the conditions of section 408(b)(2) of the Act and the regulations thereunder.

operating decisions, pursuant to terms and conditions agreed to by the parties, to resolve any disputes or other activities concerning the Properties.

6. The acquisition of the Properties by the Company usually occurs in the form of an acquisition of a long-term leasehold interest in certain oil and gas producing fields. The Properties are acquired by the Company from an unrelated party. Contemporaneously with the acquisition by the Company, the Plans normally acquire either a NPI, Royalty or Production Payment in the Properties from the Company. Such interests are acquired by paying a specified percentage (for example, 95%) of the total costs incurred by the Company in connection with its acquisition of the Properties.

The acquisition of a NPI is effected by a Conveyance of Net Profit Overriding Royalty Interest (the Conveyance), an agreement executed by the Plans and the Company, which enumerates the terms of the transaction. The Conveyance empowers the Company to manage the Properties, subject to the interests of the NPI owner, and imposes on the Company certain reporting and disclosure duties. These reporting and disclosure duties are intended to apprise the Plans, as NPI owner, of the Company's operating decisions. The Conveyance sets forth the Plans' entitlement to a specified percentage of the net income from the production of oil and gas derived from the Properties (for example, 90% of net income). The applicant states that it is customary in this type of oil and gas transaction for an investor, such as the Plans, to receive a NPI in the Properties reflecting a percentage less than the investor's actual share of the total costs incurred by the Company in acquiring the Properties. The Company receives the percentage of net income higher than the Company's share of the acquisition costs as compensation for operating and developing the Properties as the WI owner.

The Company does not receive any separate fee or other compensation for services rendered to the Plans with respect to the operation of the Properties. In this regard, the Company establishes a net profits account (the NP Account) which is credited with the gross proceeds received from the sale of oil and gas associated with the Properties to unrelated parties during each month of operation, in accordance with the level of production determined by the Company as WI owner. The NP Account is debited by an amount equal to the sum of all permissible costs, expenses, and disbursements associated with the operation of the Properties

under the terms of the Conveyance. The Plans' NPI share is wire transferred each month from the NP Account to the Plans' account at Bankers Trust, the Plans' trustee, and the Company, as WI owner, contemporaneously receives the remaining amount. The applicant states that at no time is the Company, as WI owner, allowed to unilaterally spend monies held in the NP Account, other than payment of the above costs and expenses, prior to such distribution.

The Company furnishes RPI with a detailed statement each month on the status of the NP Account. Such monthly reports identify all costs the Company has incurred in managing and operating the Properties which have resulted in reductions, debits or credits to the NP Account as well as the quantities of oil and gas produced, the volume and prices at which such quantities were sold and the taxes paid. The Company also provides the Plans with an annual report containing detailed information on the Company's activities with respect to the Properties during the preceding year, as well as an annual financial statement regarding the status of the NP Account, which is audited by an independent accounting firm.

In addition, the Conveyance requires the Company to defend the Plans' title to the NPI from any claims against the Properties by creditors. The Conveyance provides the Plans with a recourse mechanism to challenge calculation of the NPI or the "wellhead value" of the oil and gas produced from the Properties and receive adjustments if such calculations prove to be erroneous.⁵ The Conveyance also requires that the Company operate the Properties as a "reasonably prudent operator" in accordance with industry standards. The applicant states that the Company's failure to fulfill this "prudent operator standard" would mean a cause of action by the Plans to recover monetary damages for losses sustained by the Plans through the Company's breach of the standard. Any disputes arising under the Conveyance regarding the determination and proper payments of net profits by the Company may be submitted to an independent arbitrator. Other matters not related to the determination or payment of net profits, that are viewed as a breach of the Conveyance, may be remedied by the Plans at law or in equity.

The Conveyance allows the Plans a right to assign, exchange, sell, transfer or otherwise convey the NPI in the Properties to a third party. Therefore, if

⁵ The "wellhead value" is the price paid to the Company for the oil and gas sold from the Properties.

the Company does not perform its activities as WI owner in a prudent manner or if the oil and gas wells located on the Properties are no longer profitable, RPI may recommend and GMIMCo may approve the sale or assignment of the NPI. The applicant states that the Plans' NPI will be marketable to third parties and that all decisions concerning whether to sell the NPI will be made by GMIMCo. The Conveyance states such a sale or assignment by the Plans would be subject to the prior written consent of the Company, which consent may not be unreasonably withheld. In this regard, the Plans must provide the Company with notice of the proposed sale or assignment within 30 days of the transaction.

The Conveyance also states that the Company must notify the Plans within 30 days of the Company's intent to release, assign, surrender or abandon any interest in the Properties. In such instances, the Plans will convey the NPI to the Company contemporaneously with the Company's negotiated sale or auction of the WI to a third party buyer if GMIMCo determines that the transaction would be in the Plans' best interest. The Plans will receive from the sale proceeds an amount reflecting the value of the NPI, as determined by arm's-length negotiations directly involving the Plans' fiduciaries, the Company, and the third party buyer. However, the Plans may choose not to sell the NPI back to the Company and, in such instances, will continue to hold the NPI with a new WI owner.

7. With respect to the acquisition by the Plans of a Royalty, the Company does not transfer the Royalty pursuant to a Conveyance. Instead, the parties agree through a Sale and Assignment of the Royalty to pay the Plans a specified percentage of gross income from the oil and gas production from the Properties (for example, 85% of gross income). As with the NPI, it is customary for the Plans to receive a Royalty in the Properties reflecting a percentage less than the Plans' actual share of the total costs incurred by the Company in acquiring the Properties. The Company receives a percentage of gross income higher than the Company's share of the acquisition cost as compensation for operating and developing the Properties as the WI owner. Payment of the Royalty continues during the term of a producing oil and gas lease for the Properties or for a stated period. The Royalty owner, like the NPI owner, is not liable for losses or for the cost of exploration, development and operations associated with the Properties. The applicant states that a

Royalty is similar to a NPI, but with far less involvement by the WI owner of the Properties in the calculation or payment of the Royalty proceeds. The calculation of the Royalty payments by the Company is a fraction of the gross proceeds from the sale of oil and gas associated with the Properties, in accordance with the level of production determined by the Company as WI owner. As with a NPI, the Company does not receive any separate fee or other compensation from the Plans for the operation of the Properties.

The Royalty may be sold or assigned by the Plans to a third party, subject to the Company's prior consent, upon 30 days notice to the Company. The Company will also notify the Plans of the Company's intent to release, assign, surrender or abandon any interest in the Properties. In such instances, the Plans may sell the Royalty back to the Company contemporaneously with the Company's negotiated sale of the WI to a third party buyer. As with the NPI, the Plans will receive from the sale proceeds an amount reflecting the value of the Royalty, as determined by arm's-length negotiations directly involving the Plans' fiduciaries, the Company, and the third party buyer. The Plans may also choose not to sell the Royalty back to the Company and, in such instances, will continue to hold the Royalty with a new WI owner.

With respect to the acquisition by the Plans of a Production Payment, the applicant states that such an interest is transferred through a sale and assignment that is very similar to a Royalty. A Production Payment is a non-operating interest in oil and gas produced from the Properties, providing the owner with a fractional share of the gross proceeds from the oil and gas produced, free of the costs of production. However, unlike a Royalty, a Production Payment will terminate at a pre-determined point in time or when a pre-determined specified dollar amount or volume of oil and gas production has been realized from the Properties by the Production Payment owner (i.e. the Plans). The Production Payment owner is also not liable for losses or for the costs of exploration, development and operations associated with the Properties. The applicant represents that RPI will ensure that all other conditions and safeguards which are present with a Royalty acquired from a Company will be present in any Production Payment.

8. All acquisitions of the Properties relating to either the Plans' acquisition of a NPI, Royalty, or Production Payment are negotiated at arm's-length between the Company, the Plans and

the third party-seller of the Properties. The Plans' experts and the Company's experts, acting separately, gather information on the Properties to determine the appropriate offering price for the Properties. The Company cannot acquire any Properties for a simultaneous Conveyance of a NPI or assignment of a Royalty or Production Payment to the Plans without the approval of GMIMCo. The terms of any Conveyance of a NPI or assignment of a Royalty or Production Payment are negotiated by RPI pursuant to separate arm's-length negotiations with the Company. The Company has no control, discretion or influence with regard to the decision of the Plans' fiduciaries to acquire any interest in the Properties or to engage in any subsequent transactions with the Company (see Item #9 below).

9. The applicant represents that with respect to the acquisition by the Plans of a NPI in any Properties, the total activities that are conducted by the Company pursuant to the terms of the Conveyance create a sufficient level of services on the part of the Company in favor of the Plans' NPI in the Properties as to make the Company a party in interest with respect to the Plans as a service provider for the Plans.⁶ Therefore, any subsequent acquisition of a NPI by the Plans from the Company, or the acquisition by the Plans of a Royalty or Production Payment from the Company, would be a prohibited transaction under the Act. In addition,

⁶ The applicant states that a NPI is a distinct property interest which does not reflect an equity interest in any underlying assets (i.e. other oil and gas investment interests in the Properties or the Properties themselves). Thus, the applicant maintains, there is no "look-through" to the underlying oil and gas Properties and such Properties are not "plan assets" by virtue of the Plans' ownership of a NPI, under the Department's "plan asset" regulation (see 29 CFR 2510.3-101). The applicant states that the Company's party in interest status under section 3(14) of the Act is obtained solely through the services it provides to the Plans as a NPI owner, pursuant to the Conveyance, but not as a result of any services provided to the Plans as a Royalty or Production Payment owner.

The Department expresses no opinion as to whether: (1) The Plans' ownership of either a NPI, Royalty or Production Payment would establish a party in interest relationship with the Company; (2) the Properties are considered "plan assets" by virtue of the Plans' ownership of any NPI, Royalty or other interest; or (3) the Companies are considered fiduciaries with respect to the Plans under section 3(21) of the Act by virtue of their management and operation of the Properties as WI owners. Accordingly, the proposed exemption extends only to those transactions discussed herein and does not extend to any prohibited transactions under section 406(a) or 406(b) which may result from operating decisions made by the Companies with respect to the Properties or from any services provided by the Companies with respect to the Plans' interests in the Properties.

a sale of either a NPI, Royalty or Production Payment by the Plans back to the Company would be a prohibited transaction under the Act. Moreover, RPI may recommend that the Plans acquire an additional NPI, Royalty or Production Payment from the Company by first making a loan to the Company where the Plans will have a right to convert the loan into such an interest in a particular Property at a later date. Under such circumstances, the loan and the future conveyance of the NPI, Royalty or Production Payment to the Plans by the Company would be prohibited transactions under the Act. The applicant states that RPI may also recommend to the GMIMCo an acquisition of a Company Security, on a private placement basis, from the Company or a sale of the Company Security back to the Company. Such a Company Security would be either stock issued by the Company or an affiliate, as defined above, or a debt security issued by the Company or an affiliate which is convertible into such stock at the option of the owner at a later date. The acquisition or sale of the Company Security, where the Company is a party in interest with respect to the Plans, would be a prohibited transaction under the Act. Finally, RPI may recommend to GMIMCo an acquisition or sale of a Company Partnership Interest or a Company Venture Interest. These transactions would involve entities where the Company could be either a general partner or a joint venturer as well as an operating owner for certain Properties. In such instances, the Plans would acquire a nonoperating oil and gas investment interest in the entity directly from the Company or would sell such an interest back to the Company. All such transactions by the Plans with the Company, where the Company is a party in interest with respect to the Plans, would be prohibited transactions under the Act.

10. RPI, as the Plans' qualified oil and gas investment manager, will negotiate the terms of each transaction with the Companies, will review each transaction for the Plans based on a thorough analysis of the Companies and the Properties involved, and will recommend approval of the transaction to GMIMCo. RPI's analysis will include a review of all relevant documents, including engineering reports and financial statements relating to the Properties as well as appraisals of the fair market value of the Properties. GMIMCo will approve each transaction based on RPI's recommendations and will make its own independent analysis of the terms of the transaction and the

suitability of the transaction as an investment for the Plans' portfolio.

The applicant states that the terms of each transaction described above will be at least as favorable to the Plans as the terms generally available in an arm's-length transaction between unrelated parties. When the Plans decide to acquire a NPI, Royalty or Production Payment from a Company, RPI will negotiate the terms of the acquisition in arm's-length negotiations with the Company. Such transactions will generally involve Properties which were acquired by the Company on the open market with a simultaneous assignment of the interest by the Company to the Plans. RPI will ensure that the acquisition documents include terms and conditions which are favorable to the Plans. If at any time the Plans decide to sell the NPI, Royalty or Production Payment back to the Company, RPI will negotiate for a price which reflects the fair market value of the interest, as determined by the Plan's fiduciaries based on appraisals of the Properties made by qualified, independent appraisers. In this regard, GMIMCo retains the right to choose either RPI or another qualified, independent appraiser to appraise the Properties to determine the fair market value of the Plans' interest prior to the sale. However, if the Plans cannot obtain from the Company a price for the interest which reflects the fair market value of such interest, the Plans' fiduciaries will not sell the interest back to the Company and will sell the interest on the open market.

If the Plans choose to sell a NPI, Royalty or Production Payment back to the Company in connection with the Company's sale of the WI to a third party buyer, RPI will negotiate for a price which reflects the fair market value of the interest, as agreed to by the Plans' fiduciaries in arm's-length negotiations directly involving the Plans, the Company, and the third party buyer.

If the Plans determine that it would be appropriate to engage in a loan transaction with a Company, RPI will negotiate for terms which reflect interest rates that are commensurate with the prevailing market rates quoted by established commercial lenders for similar loans. RPI will ensure that the loan is secured by interests in Properties which will have a significant value to the Plans in case of foreclosure or in case the Plans exercise a conversion option to acquire a NPI, Royalty or Production Payment in such Properties. The applicant represents that the designated oil and gas investment interests in the Properties used as

collateral for a loan will have a fair market value of at least 150% of the loan amount throughout the duration of the loan, as determined in accordance with appraisals of such Properties by RPI or another an independent, qualified appraiser selected by RPI.

If the Plans decide to acquire or sell any Company Securities, Company Partnership Interests, or Company Venture Interests from or to a Company, RPI will negotiate the terms of such transactions with the Company at arms-length. RPI will ensure that the price paid or received by the Plans for such securities or interests reflects their fair market value, based on appraisals developed by RPI or other qualified, independent appraisers selected by RPI.

RPI will monitor all transactions on behalf of the Plans and will take appropriate actions to safeguard the interests of the Plans. RPI's actions will include: Negotiating a correction with the Company of any activities by the Company which adversely affect the Plans' NPI; recommending to GMIMCo a sale of any NPI, Royalty, or Production Payment involving the Properties; monitoring the fair market value of the Properties or interests therein used to secure a loan made by the Plans; and exercising conversion rights with respect to any debt interests or securities held by the Plans which allow the Plans to obtain either a NPI, Royalty or Production Payment in certain Properties or stock in a Company.

The Plans will not pay any commissions or other expenses with respect to the transactions with the Companies. The applicant states that no investment management fee, advisory fee, underwriting fee, sales commission or similar compensation will be paid to the Companies by the Plans in connection with any of the transactions. In addition, the applicant represents that the Company's only compensation for operating and developing the Properties as the WI owner, under any Conveyance of a NPI or assignment of a Royalty or Production Payment, will be its share of the income from the Properties under the terms of the transaction (as discussed in Item 16 above).

11. RPI represents that direct investments in interests in the Properties offer the Plans unusual potential for long-term appreciation and profit. RPI states that the oil and gas investments described in the proposed exemption are in the best interests of the Plans and their participants and beneficiaries. RPI states further that the annualized cash return to the Plans, through June 30, 1993, for those oil and gas investments supervised and

managed by RPI, on behalf of the Plans, was averaging approximately 17%.

12. The applicant states that GMIMCo may decide to appoint other oil and gas investment managers for the Plans in the future. Therefore, the applicant requests that the proposed exemption apply to trustees or investment managers other than RPI that are "qualified oil and gas investment managers" as defined herein. Such fiduciaries will be entities that would otherwise satisfy the definition of a QPAM under Section V(a) of PTE 84-14 except for the fact that GMIMCo retains final approval authority for all oil and gas investments recommended by such fiduciaries (see Section I(c) of PTE 84-14). In addition, the assets of the Plans managed by such a fiduciary may represent more than 20% of the fiduciary's total assets under management (see Section I(e) of PTE 84-14). However, the applicant represents that otherwise such fiduciaries:

(i) Will be independent of and unrelated to the Companies and will have significant experience in evaluating and managing oil and gas investments for institutional investors, such as the Plans;

(ii) Will provide oil and gas investment advisory services to the Plans pursuant to a management agreement or trust agreement containing similar due diligence requirements as exist with respect to RPI;

(iii) Will perform the oil and gas investment advisory services pursuant to investment guidelines reviewed and approved by GMIMCo that are substantially similar to RPI's investment guidelines;

(iv) Will actively manage the investment on behalf of the Plans after the investment is made and will monitor the activities of the Company and provide reports to the GMIMCo similar to those prepared and delivered by RPI;

(v) Will be subject to significant review and oversight by GMIMCo;

(vi) Will review and recommend to GMIMCo any transaction between the Plans and the Company in a manner substantially similar to RPI's activities on behalf of the Plans;

(vii) Will negotiate terms and conditions of any transaction between the Plans and the Company which are no less favorable to the Plans than the terms generally available in an arm's-length transaction between unrelated parties; and

(viii) Will consummate any transaction between the Plans and the Company only if the safeguards set forth in the proposed exemption are met.

13. The applicant states that the amount of each Plan's total assets involved in all transactions with the Companies has represented, and will continue to represent, no more than three percent (3%) of such Plan's total assets as of the date of approval of each such transaction by the PIC or GMIMCo.

14. On May 8, 1990, the Plans acquired through a Conveyance an 88% NPI in certain Properties from Callon Offshore Production, Inc. (Callon), an oil and gas exploration and development company whose principal offices are located in Natchez, Mississippi. The Properties are located in Louisiana. The applicant states that Callon had contemporaneously acquired the Properties from Chevron U.S.A., Inc., an unrelated party. The Plans paid approximately 98% of the \$28 million purchase price of the Properties to Callon for the Plans' NPI. The Plans had acquired a NPI from Callon in certain other Properties prior to the time of the Plans' acquisition of an NPI from Callon on May 8, 1990. Therefore, the applicant states that Callon was a party in interest with respect to the Plans on such date. The applicant states further that the Plans have purchased additional NPIs in other Properties, as well as Royalties in certain Properties, from Callon and other Companies since May 8, 1990, and that all such transactions have met the safeguards and protections incorporated in the exemption application. Accordingly, the applicant requests that the exemption be effective as of May 8, 1990, and apply to all other transactions with Companies as described herein that are parties in interest with respect to the Plans at the time of such transactions.

15. In summary, the applicant represents that the transactions meet the statutory criteria contained in section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) Each transaction engaged in by the Plans and the Companies with respect to the oil and gas investments described herein has been and will continue to be reviewed and recommended by a "qualified oil and gas investment manager" acting on behalf of the Plans which is independent of the Companies, and has been and will be approved by either the PIC or GMIMCo to ensure that the transaction meets the investment objectives of the Plans and that each transaction is in the best interests of the Plans;

(b) The Companies have not had, and will not have, any authority or control over the decisions of the Plans' fiduciaries to acquire any NPI or other interest in the Properties or to engage in

any subsequent oil and gas transactions described herein with the Companies;

(c) The terms of each transaction have been and will continue to be no less favorable to the Plans than the terms generally available in an arm's-length transaction between unrelated parties;

(d) No investment management fee, advisory fee, underwriting fee, brokerage or sales commission, or similar compensation has been or will be paid by the Plans to the Companies with regard to the transactions;

(e) A "qualified oil and gas investment manager" will continue to monitor all transactions on behalf of the Plans and will take any appropriate actions necessary to safeguard the interests of the Plans; and

(f) The amount of each Plan's total assets involved in oil and gas transactions with the Companies will not represent more than three percent (3%) of such Plan's total assets.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department at (202) 219-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative

exemptions and transitional rules.

Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 23rd day of December, 1993.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.*

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BILLING CODE 4510-29-P

[Prohibited Transaction Exemption 93-83;
Exemption Application No. D-9213, et al.]

Grant of Individual Exemptions; Texas Instruments Employees Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the *Federal Register* of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a

written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Texas Instruments Employees Pension Plan (the Plan) Located in Dallas, Texas

[Prohibited Transaction Exemption No. 93-83; Application No. D-9213]

Exemption

The restrictions of section 406(a)(1)(A), 406(a)(1)(D), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the leasing by the Plan to Texas Instruments, Inc. (the Employer) of either or both of two parcels of improved real property located in Dallas, Texas (the Dallas Parcels) and to the continued holding by the Plan of the Dallas Parcels, effective upon the sale, lease, or other disposition to third parties of another parcel owned by the Plan, located in a suburb of Detroit, Michigan (the Michigan Parcel), or upon the expiration of the existing lease between the Plan and the Employer on the Michigan Parcel. This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) An independent qualified fiduciary (the I/F), acting on behalf of the Plan, determines that the transactions are feasible, in the interest of, and protective of the Plan;

(b) The I/F manages the Dallas Parcels on an on-going basis and is empowered to take whatever action it deems appropriate to serve the best interest of the Plan and its participants and beneficiaries, including but not limited to the retention, leasing, or sale of the Dallas Parcels;

(c) The fair market value of the Dallas Parcel(s) will at no time exceed twenty-five percent (25%) of the value of the total assets of the Plan;

(d) The I/F negotiates, reviews, and approves the terms of the leases with the Employer on the Dallas Parcels;

(e) The terms and conditions of each of the leases with the Employer on the Dallas Parcels will be no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties;

(f) An independent qualified appraiser determines the fair market value of the rental on each of the Dallas Parcels;

(g) The I/F monitors compliance with the terms of the leases on the Dallas Parcels to the Employer throughout the duration of such leases and is responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of the Employer under the terms of the leases on the Dallas Parcels;

(h) The Plan incurs no fee, costs, commissions, or other charges or expenses as a result of its participation in the transactions, other than the fee payable to the I/F; and

(j) The I/F ensures that the terms and conditions described herein are at all time satisfied.¹

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the exemption. All comments and requests for hearing were due by November 29, 1993.

The Department received three letters from interested persons commenting on the exemption; none of these comment letters contained a request for a hearing.

With respect to the written comments submitted by interested persons, the Department forwarded copies of the

¹ For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

comment letters to the applicant and requested that the applicant address the concerns raised by the commentators in writing. In this regard, one of the commentators expressed the belief that the exemption should not be granted, as the transaction would jeopardize the soundness of the Plan. The other commentator expressed concern that as a result of the exemption, she would no longer be entitled to receive benefits.

With respect to the first comment that the transactions might jeopardize the soundness of the Plan, the applicant stated that there are sufficient safeguards in the transactions to protect the Plan and its participants and beneficiaries. The applicant noted that the exemption protects the Plan from having to dispose of the Dallas Parcels, to lease to third parties, or to acquire real property for reasons other than investment considerations. With respect to the second comment, the applicant asserts that the commentator's arguments addressing her entitlement to early retirement benefits are not relevant to the transactions which are the subject of the exemption.

The applicant also submitted a comment in a letter, dated November 29, 1993, seeking clarifications of the language, as set forth in condition (h) on page 53579 and page 53583 of the Notice, which states that the Plan may incur "no fee, costs, commissions, or other charges or expenses as a result of its participation in the transactions, other than the fee payable to the I/F." The applicant interprets this condition as not precluding the payment by the Plan of the broker's commission on the sale by the Plan of the real property in Michigan to unrelated third parties. In the view of the applicant, as the transactions involve the leasing by the Plan to the Employer of either or both of two parcels of improved real property located in Dallas, Texas and the continued holding by the Plan of such parcels, the payment by the Plan of brokerage commission does not arise as a result of its participation in the transactions, but rather is a cost incurred in connection with the sale of the real estate in Michigan to unrelated third parties. The Department concurs in this interpretation.

Accordingly, after giving full consideration to the record, including the comments by commentators and the responses of the applicant, the Department has determined to grant the exemption, as described herein. In this regard, the comments submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental

submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, room N-5507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on October 15, 1993, 58 FR 53578.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219-8883 (This is not a toll-free number.)

Packaging Systems, Inc. 401(k) Profit Sharing Plan (the Plan) Located in Des Plaines, Illinois

[Prohibited Transaction Exemption No. 93-84; Application No. D-9355]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply for a period of 5 years from the date of publication of this exemption to (1) the purchase by the Plan of certain leases of equipment (the Leases) from Rapak, Inc., an affiliate of Packaging Systems, Inc. (the Employer), and (2) the agreement by the Employer to indemnify the Plan against any loss relating to the Leases and also to repurchase any leases that are in default in accordance with paragraph (E) below, provided that the following conditions are met:

A. Any sale of Leases to the Plan will be on terms at least as favorable to the Plan as an arm's length transaction with an unrelated third party would be.

B. The acquisition of a lease from Rapak, Inc. shall not cause the Plan to hold immediately following the acquisition (i) more than 20% of the current value (as that term is defined in section 3(26) of the Act) of Plan assets in Leases sold by Rapak, Inc., or (ii) more than 5% of Plan assets in Leases of any one lessee.

C. Prior to the purchase of each Lease, an independent, qualified fiduciary must determine that the purchase is appropriate and suitable for the Plan and that any Lease purchase is a fair market value transaction.

D. The independent fiduciary, on behalf of the Plan, will monitor the terms of the Leases and the exemption and take whatever action is necessary to enforce the rights of the Plan.

E. Upon default by the lessee on any payment due under a Lease, the

Employer has agreed to repurchase the Lease from the Plan at the face value as of the date of the default, without discount, and to indemnify the Plan for any loss suffered. The occurrence of any of the following events shall be considered events of default for purposes of this section: The lessee's failure to pay any amounts due hereunder within five days after receipt of written notice from the Plan's independent fiduciary, or the lessee's failure to pay any amounts due hereunder within 30 days after payment becomes past due, if earlier; the lessee's failure to perform any other obligation under this agreement within ten days of receipt of written notice from the Plan's independent fiduciary; abandonment of the equipment by the lessee; the lessee's cessation of business; the commencement of any proceeding in bankruptcy, receivership or insolvency or assignment for the benefit of creditors by the lessee; false representation by the lessee as to its credit or financial standing; attachment or execution levied on lessee's property; or use of the equipment by third parties without lessor's prior written consent.

F. The Plan receives adequate security for the property underlying the Lease. For purposes of this exemption, the term adequate security means that the property leased is secured by a perfected security interest which will name the Plan as the secured party.

G. Insurance against loss or damage to the leased property from fire or other hazards will be procured and maintained by the lessee and the proceeds from such insurance will be assigned to the Plan.

H. The Plan shall maintain for the duration of any Lease which is sold to the Plan pursuant to this exemption, records necessary to determine whether the conditions of this exemption have been met. The records referred to above must be unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Plan, during normal business hours by the Internal Revenue Service, the Department of Labor, Plan participants, any employer organization any of whose members are covered by the Plan, or any duly authorized employee or representative of the above described persons.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 29, 1993 at 58 FR 58198.

Temporary Nature of Exemption

The exemption is temporary and will expire five years from the date this Final Grant is published in the Federal Register with respect to the Plan's purchase of a Lease. The Plan may hold the Leases pursuant to the terms of the exemption subsequent to the end of the five year period.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

Mastercraft Industries, Inc. Master Employee Benefit Plan & Trust (the Plan) Located in Mt. Pleasant, Texas

[Prohibited Transaction Exemption 93-85; Exemption Application Nos. D-9434 and D-9435]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act shall not apply to the sale by the Plan to Mastercraft Company, L.P., a party in interest with respect to the Plan, of certain real property and related personal property (collectively, the Property), provided the sales price is not less than the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 15, 1993, at 58 FR 53583.

FOR FURTHER INFORMATION CONTACT: Paul Kelly of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

Solar Screen of Florida Employees' Profit Sharing Plan (the Plan) Located in Maitland, Florida

[Prohibited Transaction Application 93-86; Exemption Application No. D-9433]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan to Solar Screen of Florida, Inc. (the Employer), a party in interest with respect to the Plan, of a Wegoma SD 15 double mitre saw (the Saw) and a 1954 Clark forklift (the Forklift), provided that: (a) The proposed sales prices for the Saw and the Forklift are paid in a single sum of cash on the date of the sale, and (b) the proposed sales prices for the Saw and the Forklift are not less than the greater of (i) the fair market values of the Saw and the Forklift as of the proposed sale

date, or (ii) the Plan's aggregate costs of acquiring and holding the Saw and the Forklift.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 29, 1993 at 58 FR 58193/58194.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan, of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 23rd day of December, 1993.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.*

[FR Doc. 93-31792 Filed 12-28-93; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before February 14, 1994. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what

happens to the records after this period. Some schedules are comprehensive and cover all the records of the agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Justice, Federal Bureau of Investigation (N1-65-93-3). Headquarters Electronic Surveillance Manual entries for disposable case files which have been entered into an automated index.

2. Department of Transportation, Federal Highway Administration (N1-406-94-1). Copies of Motor Carrier Safety Assistance program grant files.

3. ACTION (N1-362-94-5). Accessibility certifications and general administrative records.

4. Commission on National and Community Service (N1-220-94-3). Completed Grants and Deputy Director Correspondence.

5. National Archives and Records Administration (N2-032-93-1). Purchase orders, semi-monthly construction reports, and rental housing statements, 1917-1920 from the United States Shipping Board.

6. National Credit Union Administration (N1-413-93-1). Records relating to the operation of the Central Liquidity Facility.

7. White House Commission on Presidential Scholars (N1-220-93-15). Routine administrative records.

Dated: December 16, 1993.

Trudy Huskamp Peterson,
Acting Archivist of the United States.

[FR Doc 93-31707 Filed 12-28-93; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93-096]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Aviation Safety Reporting System Subcommittee.

DATES: January 26, 1994, 9 a.m. to 5:30 p.m.

ADDRESSES: National Business Aircraft Association, suite 200, 1200 18th Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Dr. William Reynard, Office of Aviation Safety Reporting System, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/969-3969.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Operations Overview
- Research Report
- Database Development
- Make/Model Identification
- International Activities

Dated: December 22, 1993.

Timothy M. Sullivan,
Advisory Committee Management Officer.

[FR Doc. 93-31781 Filed 12-28-93; 8:45 am]

BILLING CODE 7510-01-M

[Notice 93-095]

NASA Advisory Council, Space Science Advisory Committee (SScAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration

announces a meeting of the NASA Advisory Council, Space Science Advisory Committee.

DATES: January 18, 1994, 8:30 a.m. to 5:15 p.m.; January 19, 1994, 8:30 a.m. to 6 p.m.; and January 20, 1994, 8:30 a.m. to 3 p.m.

ADDRESSES: The National Aeronautics and Space Administration, 300 E Street, SW., 5th Floor Conference Room, MFC-5, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Lawrence J. Caroff, Code SZF, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-0351.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

- Overview of Office of Space Science Status
- Strategic Planning
- Divisional Reports
- Subcommittee Reports
- Hubble Servicing Highlights
- Mission Operations and Data Analysis Issues
- Integrated Technology Plan

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: December 22, 1993.

Timothy M. Sullivan,
Advisory Committee Management Officer.

[FR Doc. 93-31780 Filed 12-28-93; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, D.C. 20550.

SUPPLEMENTARY INFORMATION: On November 17, 1993 a notice in the *Federal Register* of permit applications received. Permit to enter import into USA-Port of Entry Honolulu and enter site of special scientific interest, was

issued to David R. Marchant on December 20, 1993.

Thomas F. Forhan,
Permit Officer, Office of Polar Programs.

[FR Doc. 93-31706 Filed 12-28-93; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Research, Evaluation, and Dissemination; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research, Evaluation, and Dissemination.

Date and Time: January 26, 1994; 8:30 a.m. to 5:30 p.m. January 27, 1994; 8:30 a.m. to 4 p.m.

Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Ms. Barbara Lovitts, Assistant Program Director, 4201 Wilson Boulevard, room 855, Arlington, VA 22230. Telephone (703) 306-1652.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Research in Teaching and Learning Program.

Reason for Closing: Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: December 22, 1993.

M. Rebecca Winkler,
Committee Management Officer

[FR Doc. 93-31708 Filed 12-29-93; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Science Resources Studies; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Science Resources Studies.

Date and Time: January 20, 1994, from 6 p.m. to 8 p.m.; and January 21, 1994, from 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, room 390, Washington, DC.

Type of Meeting: Open.

Contact Person: Jennifer Sue Bond, Program Director, Science and Engineering Indicators Program, Division of Science Resources Studies, room 965, National Science Foundation, Arlington, Va. 22230, (703) 306-1777.

Purpose of Meeting: Provide advice and suggestions regarding technical reports. Review the methodology report and a detailed codebook for the 1993 Joint NSF/NIH survey of Public Understanding of Science.

Agenda: Review draft methodology report; review codebook and draft analytical report for questionnaire 2 concerning public attitudes toward and understanding of biomedicine and behavioral sciences.

Minutes. May be obtained from contact person listed above.

Dated: December 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93-31709 Filed 12-28-93; 8:45 am]

BILLING CODE 7555

NUCLEAR REGULATORY COMMISSION

Gulf States Utilities Co.; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-458]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Facility Operating License No. NPF-47, issued to Gulf States Utilities Company (GSU), for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would extend the schedule for performing certain Type C local leak rate tests required by 10 CFR part 50, appendix J, section III.D.3, to be completed within a two-year time interval.

The Need for the Proposed Action

The exemption is requested on a one-time only basis to support the current refueling outage schedule. Requiring a plant shutdown solely to perform surveillance tests would cause an unnecessary thermal transient on the plant and could result in unnecessary exposure to personnel.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed exemption. The proposed exemption would allow GSU to conduct the local leak rate tests during the next refueling outage, an extension of 29 days. There will be no

changes to the facility or the environment as a result of the exemption.

Alternative to the Proposed Action

It has been determined that there is no impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or will have a greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for River Bend Station, Unit 1 dated January 1985.

Agencies and Persons Consulted

The NRC staff reviewed GSU's request and consulted with the Louisiana State official. The State official had no comments regarding the NRC's proposed action.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the exemption request dated November 18, 1993, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, Lower Level, 2120 L Street NW., Washington, DC 20555, and at the local public document room, located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 22nd day of December 1993.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Director, Project Directorate IV-2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93-31842 Filed 12-28-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket 70-3070]

Louisiana Energy Services, L.P.; Extension of Comment Period for the Draft Environmental Impact Statement for the Claiborne Enrichment Center, Homer, LA

By Federal Register Notice published November 24, 1993 (58 FR 62148), the U.S. Nuclear Regulatory Commission

(the Commission) announced the availability of the Draft Environmental Impact Statement (DEIS) (NUREG-1484) regarding the proposed construction and operation of the Claiborne Enrichment Center to be located near Homer, Louisiana, with comments on the DEIS from interested persons due to the Commission by January 10, 1994.

In order to ensure that sufficient time is allowed for public comment, the Commission hereby extends the comment period for the DEIS for an additional 15 days, with comments due for the Commission's consideration by January 25, 1994. Comments received after January 25, 1994, will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

Comments on the DEIS should be sent to the Chief, Enrichment Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, Mail Stop 4-E-4, U.S. Nuclear Regulatory Commission, Washington, DC 20555. All comments received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, DC, and the Local Public Document Room at the Claiborne Parish Library, 901 Edgewood Drive, Homer, Louisiana.

FOR FURTHER INFORMATION, CONTACT: Merri Horn, Enrichment Branch, Division of Fuel Cycle Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 504-2606.

Dated at Rockville, Maryland, this 22nd day of December 1993.

For the Nuclear Regulatory Commission.

John W. N. Hickey,

Chief, Enrichment Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93-31843 Filed 12-28-93; 8:45 am]

BILLING CODE 7590-01-P

[Docket No. 50-302]

Florida Power Corp., (Crystal River Nuclear Generating Plant, Unit 3); Exemption

I
Florida Power Corporation (FPC or the licensee) is the holder of Facility Operating License No. DPR-72, which authorizes operation of the Crystal River Unit 3 Nuclear Generating Plant (CR-3 or the facility) at steady-state reactor power level not in excess of 2544 megawatts thermal. The license provides, among other things, that it is subject to all rules, regulations and

Orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of one pressurized water reactor located at the licensee's site in Citrus County, Florida.

II

Section 50.54(q) of 10 CFR part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR part 50. Section IV.F.2 of Appendix E requires that each licensee annually exercise its emergency plan. Section IV.F.3 of Appendix E requires that each licensee shall exercise with offsite authorities such that the State and local emergency plans are exercised biennially.

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a) are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Special circumstances exist when application of the regulation in the particular circumstance would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule [10 CFR 50.12(a)(2)(ii)]. The underlying purpose of 10 CFR part 50, Appendix E, Sections IV.F.2 and IV.F.3, is to demonstrate that the emergency plans are adequate and capable of being implemented, and that the state of emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. In addition, special circumstances exist when the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation [10 CFR 50.12(a)(2)(v)].

III

By letter dated October 27, 1993, the licensee requested an exemption from the requirements of 10 CFR 50.47 and Appendix E to conduct an annual exercise of the CR-3 Radiological Emergency Plan in 1993. The licensee had planned to conduct a full-participation exercise involving the State of Florida and local response organizations on November 3, 1993. The licensee requested that an exemption be granted because the State and local government agencies requested a delay of the 1993 annual exercise from November 3, 1993 to January 20, 1994.

The request to move the exercise date was originated by the Citrus County Sheriff's Department (Emergency Management Section) because they would be unable to participate on November 3rd as a result of a conflicting community issue which could have necessitated their involvement at that time. The licensee states that the issue involved the well-being of Citrus County residents. This proposed delay will prevent the licensee from meeting the annual requirements to exercise the CR-3 Radiological Emergency Plan as specified in Appendix E to 10 CFR part 50, and, therefore, FPC requested a schedular exemption.

The previous emergency preparedness exercise at Crystal River was successfully conducted on November 5, 1992, and included the participation of State and local agencies. The licensee had scheduled, planned, and coordinated the 1993 exercise with participating Federal, State, and local agencies for early November. The scope and objectives, and the final scenario documentation for the November 1993 exercise were submitted to the NRC on August 19, 1993 and September 17, 1993, respectively, which is within the timeframes established for their submittal in support of a November 1993 exercise. In addition, the licensee states that a training exercise with the State of Florida and local agencies was conducted on October 1, 1993, which activated all emergency facilities and included participation from all major responder groups.

The schedule for future exercises will not be affected by this exemption. FPC has stated it will conduct the previously scheduled 1994 exercise the week of October 24, 1994, as planned. In that the 1993 exercise was to be evaluated by the Federal Emergency Management Agency (FEMA), concurrence for the revised date of January 20, 1994 has been received from FEMA.

Therefore, the licensee demonstrated a good faith effort in attempting to comply with the regulation, and the exemption will provide only temporary relief from the regulation.

The most recent NRC Systematic Assessment of Licensee Performance (SALP) report for CR-3, issued on January 12, 1993, for the period April 28, 1991 through August 22, 1992, indicated that the licensee has demonstrated an effective response capability for dealing with emergency situations during the full State and local participation exercises. The licensee has consistently maintained a Category 1 rating in the functional area of emergency preparedness. Additionally, the June 18, 1993, inspection report (50-

302/93-12) of the CR-3 Emergency Preparedness Program, conducted May 10-19, 1993, indicates the emergency response program is fully capable of being effectively implemented in the event of an emergency and that the emergency preparedness program activities were organized and adequately documented.

IV

Based upon a review of the licensee's request for an exemption from the requirement to conduct an exercise of the Crystal River Emergency Plan in 1993, the NRC staff finds that the underlying purpose of the regulation will not be adversely affected by the reschedule of the November 3, 1993 exercise to January 20, 1994. The effective response capability demonstrated by the licensee during the 1992 emergency preparedness exercise, the activities in preparation for the 1993 exercise, including the comprehensive training exercise conducted with offsite authorities on October 1, 1993, and the readiness of the licensee's emergency preparedness program as reflected in its SALP rating and the most recent inspection report, provide assurance that the resources and personnel necessary for proper emergency response are in place to respond to a nuclear emergency at the Crystal River site. Thus, an exercise in 1993 is not necessary to achieve the underlying purpose of the rule and the requested exemption from the requirement in 10 CFR part 50, Appendix E, Section IV.F, to defer the performance of an exercise of the CR-3 Radiological Emergency Plan until January 20, 1994, will not adversely affect the overall state of emergency preparedness at the Crystal River site.

For these reasons, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption requested by the licensee's letter dated October 27, 1993, as discussed above, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and that special circumstances are present as set forth in 10 CFR 50.12(a)(2)(ii) and (v).

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will have no significant impact on the environment (58 FR 66385). This exemption is effective upon issuance.

Dated at Rockville, Maryland this 27th day of December 1993.

For the Nuclear Regulatory Commission.
Jose A. Calvo,
*Acting Director, Division of Reactor Projects—
 I/II, Office of Nuclear Reactor Regulation.*
 [FR Doc. 93-31841 Filed 12-28-93; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33365; File No. SR-DTC-93-14]

Self-Regulatory Organizations; The Depository Trust Co.; Filing of Proposed Rule Change Relating to a Clarification of Rule 5

December 21, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 20, 1993, The Depository Trust Company ("DTC") 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 primarily by DTC. 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

This rule filing will clarify that Rule 5 of DTC's Rules does not in any way require DTC to determine whether securities, when deposited with DTC, may be lawfully transferred by book-entry in light of Federal securities laws.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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 DTC 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 clarify the meaning of Rule 5 of DTC's Rules. On December 13, the Commission issued an order approving

a proposed rule change by DTC relating to the eligibility of Rule 144A securities at DTC.² In the order, the Commission suggested that Rule 5, Section 1 of DTC's Rules requires that 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."³ The purpose of this rule change is to clarify that, contrary to the implication of the aforementioned language in the Commission's order, Rule 5 of DTC's Rules does not in any way require DTC to determine whether securities, when deposited with DTC, may be lawfully transferred by book-entry in light of Federal securities laws.⁴

The proposed rule change is consistent with section 17A⁵ of the Act and the rules and regulations thereunder applicable to DTC because the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC 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

DTC has neither sought nor received comments on the proposed rule change from participants.

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 DTC 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.

² Securities Exchange Act Release No. 33327 (December 13, 1993), FR _____ (File No. SR-DTC-90-06).

³ *Id.* n. 22 and accompanying text.

⁴ In the near future, DTC plans to adopt and file with the Commission as a proposed rule change revisions to Rule 5 that will, in part, further clarify the meaning of the rule.

⁵ 15 U.S.C. 78q-1 (1988).

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 DTC. All submissions should refer to File No. SR-DTC-93-14 and should be submitted by January 19, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-31775 Filed 12-28-93; 8:45 am]
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[Release No. 34-33366; File No. SR-MCC-93-05]

Self-Regulatory Organization; Midwest Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change To Modify MCC's Fund/Serv Rules

December 31, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,¹ notice is hereby given that on October 6, 1993, the Midwest Clearing Corporation ("MCC") 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 primarily by MCC, a self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁶ 17 CFR 200.30-3(a)(12) (1992).

¹ 15 U.S.C. 78s(b)(1) (1988).

¹ 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies MCC's Mutual Fund Settlement, Entry, and Registration Verification ("Fund/Serv") service to provide for the automated transfer of mutual fund assets in the form of eligible book-entry shares.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MCC 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. MCC 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 January 31, 1989, the Commission approved a proposed rule change by MCC to establish facilities for MCC participants use of the Fund/Serv service.² Under Fund/Serv, MCC participants generally exchange data with the National Securities Clearing Corporation ("NSCC"), MCC's Fund/Serv facilities manager.

On November 20, 1989, the Commission approved a proposed rule change by NSCC to provide for the automated transfer of mutual fund assets in the form of eligible book-entry shares that are transferred through Fund/Serv (i.e., to link Fund/Serv to the automated Customer Account Transfer Service ["ACATS"]).³ Although NSCC's participants currently have access to this linkage, MCC's participants have been unable to transfer Fund/Serv eligible assets in a client's account from one brokerage firm to another using the ACATA service.

The proposed rule change adds Section 16 (ACATS/Transfers) to Article VI, Rule 9 (Mutual Fund Settlement,

² Securities Exchange Act Release No. 26056 (January 31, 1989), 54 FR 6051 (File Nos. SR-MCC-88-05 and 07). The Fund/Serv system is a service that provides users with the capability to place and confirm mutual fund orders through a central processing facility and provides a net settlement environment and registration processing facility.

³ Securities Exchange Act Release No. 27454 (November 20, 1989), 54 FR 48962 (File No. SR-NSCC-89-12). ACATS facilitates customer account transfers from one NSCC participant to another.

Entry and Registration Verification) of MCC Rules to provide for an ACATS automated transfer of mutual fund assets between brokerage firms in the form of eligible book entry shares. The ACATS-Fund/Serv link will provide an interface and thereby will provide automatic settlement of eligible mutual fund securities transferred through the ACATS system. This procedure, MCC believes, will alleviate certain problems currently encountered in the settlement of account transfers of mutual funds. MCC notes that input and output time frames under the proposal will be identical to the current ACATS and Fund/Serv system. MCC states that the purpose of the proposed rule filing is to give MCC participants greater control over the transfer of Fund/Serv eligible assets.

MCC believes that the proposed rule change is consistent with section 17A of the Act⁴ in that it promotes the prompt and accurate clearance and settlement of mutual fund transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

MCC has not solicited or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act⁵ and Rule 19(b)-4(e)(4) thereunder⁶ because the proposal effects a change in an existing service of MCC which does not adversely affect the safeguarding of securities or funds of the custody or control of MCC or for which it is responsible and does not significantly affect the respective rights or obligations of MCC or persons using the services.

At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

⁴ 15 U.S.C. 78q-1 (1988).

⁵ 15 U.S.C. 78s(b)(A) (1988).

⁶ 17 CFR 240.189b-4(e)(4) (1991).

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 submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, 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 MCC. All submissions should refer to File No. SR-MCC-93-05 and should be submitted by January 19, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-31776 Filed 12-28-93; 8:45 am]

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[Release No. 34-33364; File No. SR-MSE-93-15]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments To Exchange Rules Regarding the Authority of the Exchange's Floor Procedure Committee and the Composition and Authority of Its Subcommittees

December 21, 1993.

On June 3, 1993, the Midwest Stock Exchange Inc. ("MSE" or "Exchange")¹ submitted to the Securities and Exchange Commission ("SEC" or

⁷ 17 CFR 200.30-3(a)(12) (1991).

¹ As of July 8, 1993, the MSE changed its name to the Chicago Stock Exchange, Inc. See Securities Exchange Act Release Nos. 32488 (June 18, 1993), 58 FR 34284 (June 24, 1993) (File No. SR-MSE-93-13) (immediate effectiveness of proposed rule change relating to amendments to the MSE's Certificate of Incorporation and Constitution to effect a name change) and 32489 (June 18, 1993), 58 FR 34285 (June 24, 1993) (File No. SR-MSE-93-16) (immediate effectiveness of proposed rule change relating to amendments to the MSE's Rules to make conforming changes in accordance with its name change).

"Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ a proposal to amend two Exchange Rules—Article IV, Rule 3 and Article XII, Rule 3—which address the authority of the Exchange's Floor Procedure Committee and the composition and authority of its subcommittees.

Notice of the proposal appeared in the *Federal Register* on September 21, 1993.⁴ No comments were received on the proposal.

I. Proposal

The Exchange proposes to amend two exchange rules⁵ dealing with the authority of the Exchange's Floor Procedure Committee and the authority and composition of its subcommittees. The Floor Procedure Committee ("Committee") has general supervision of the conduct and dealings on the Exchange floor and recommends rules and regulations necessary for the convenient and orderly transaction of business on the Exchange floor.⁶ The amendments primarily concern the sanctions that can be imposed by the Committee and its subcommittees for violations of conduct rules, and the appropriate levels of review for actions taken against the membership.

In order to accomplish its stated goals, the Exchange amended Article IV, Rule 3 to permit Floor Procedure Committee subcommittees to be composed of Exchange members who are not members of the full Floor Procedure Committee. The Chairman of each subcommittee, however, shall be a member of the full Floor Procedure Committee. This change is intended to permit the Floor Procedure Committee to function more effectively and efficiently as a policy making group with fewer members than it has done in the past. The Floor Procedure Committee believes that it can carry out its policy making goal and oversee its other responsibilities without having various subcommittee members involved in all aspects of Floor Procedure Committee work.

The amendments to Article XII, Rule 3 increase the maximum amount of a

summary fine to \$2,500 from the previous \$500 maximum, and increase the time a member can be excluded from Exchange premises to a maximum of five days, up from the previous maximum of two days. The amendment also extends the authority to impose these sanctions, previously limited to the Floor Procedure Committee only, to an appropriately designated subcommittee of the Floor Procedure Committee.

A new interpretation to Article XII, Rule 3 sets out two types of violations of decorum rules: Class A, representing more serious violations such as fighting, threatening speech, and other conduct which is detrimental to the interest or welfare of the Exchange, and Class B violations, involving less serious offenses such as dress code and speed violations.

Article XII, Rule 3 is further amended by permitting a member of the Committee or a member of its appropriately designated subcommittee, for the purpose of assuring decorum on Exchange premises, to summarily fine a member for violative conduct classified as a Class B offense in an amount up to \$100. For violative conduct classified as a Class A offense, any member of the Floor Procedure Committee or member of its appropriately designated subcommittee, with the concurrence of two other floor officials (floor governors if immediately available) may summarily fine a member up to \$2,500 and summarily exclude a member from exchange premises for the remainder of the trading day. With respect to this type of summary exclusion, another interpretation to the rule states that a member so summarily excluded can petition for reinstatement after a "cooling-off" period.

Finally, the amended rule permits a member adversely affected by a determination by anyone other than the full Floor Procedure Committee (other than a summary exclusion discussed above) to appeal the sanction to the full Floor Procedure Committee within five days, by written request. The Floor Procedure Committee's determination is final for any fine not greater than \$100. Other sanctions may be further appealed to the Executive Committee upon written request within 10 days of the Floor Procedure Committee's determination. The Executive Committee's decision is final. Any action appealed is stayed until the appeal is decided. The Floor Procedure Committee and the Executive Committee may increase or diminish the sanctions appealed but may not impose a fine greater than \$2,500 or exclusion for more than five days.

The Exchange states that the purpose of the proposed rule change is to increase the deterrent effect that potential fines and exclusions from the trading floor have on the membership for violations of the Exchange's decorum rules as well as for other improper conduct. The Exchange believes that the Floor Procedure Committee, on its own initiative or through its appropriate subcommittee, must be able to take fair but meaningful remedial action for conduct which is disruptive, threatening to individual safety or Exchange facilities, or otherwise detrimental to the welfare of the Exchange. The Exchange asserts that the current level of fines and exclusions from the trading floor do not carry a forceful deterrent effect not do they adequately address an offending member's behavior commensurate with the type of misconduct involved.

With respect to immediate exclusion from the Exchange floor, the Exchange believes that three appropriate individuals should have authority to take this action without having to convene the entire Floor Procedure Committee. The Exchange does not believe that any one individual should unilaterally be empowered to impose fines in excess of \$100 or to exclude a member from the premises. The Exchange believes that the concurrence of three appropriate individuals will ensure against arbitrary and capricious sanctions.

II. Discussion

The Commission finds the proposed rule change to be consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of sections 6(b)(5), 6(b)(6) and 6(b)(7) of the Act.⁷ Section 6(b)(5) of the Act, requires that, inter alia, the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest. The Commission believes that the proposed changes will provide for increased fines and an increased ability to enforce the decorum rules through less cumbersome procedures, thereby facilitating

⁷ 15 U.S.C. 78(f)(b)(5)(1), (f)(b)(6) and (f)(b)(7) (1988).

² 15 U.S.C. 78s(b)(1) (1988).

³ 17 CFR 240.19b-4 (1991).

⁴ See Securities Exchange Act Release No. 32885 (September 14, 1993), 58 FR 49072 (September 21, 1993).

⁵ The Exchange proposes to amend Article IV, Rule 3 and Article XII, Rule 3 of its Rules.

⁶ The MSE's Floor Procedure Committee is comprised of not less than seven members (at least three of whom shall be active on the floor of the Exchange as specialists, odd-lot dealers or floor brokers) in addition to the ex-officio members. See MSE Article IV, Rule 3.

transactions effected on the Exchange floor

Section 6(b)(6) provides that the rules of the Exchange should provide that exchange members and persons associated with its members be appropriately disciplined for violation of the provisions of the Act or rules and 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 Commission believes that the proposed changes are consistent with section 6(b)(6) in that they provide for appropriate fines or other sanctions for violations of the conduct rules or other improper conduct. The changes will increase the deterrent effect that fines and exclusions from the trading floor have on the membership for violations of the Exchange's decorum rules or other similar improper conduct. The Commission also believes that it is appropriate that the Exchange have authority to take immediate action against a member to protect individual safety and Exchange facilities. To accomplish these objectives, the proposed changes appropriately increase permissible summary fines and permissible exclusion from the trading floor. In addition, the Exchange has created two classes of fines so that the more serious minor offenses are separated from and treated differently than the less serious minor offenses, thereby making it easier to expedite such minor offenses. Overall, the changes in procedures will put Exchange members on notice that minor rule violations are being taken more seriously by the Exchange and the changes will make it easier for the Exchange to make decisions about such minor rule violations.

Similarly, section 6(b)(7) of the act provides, *inter alia*, that the rules of an exchange must provide a fair procedure for the disciplining of members and persons associated with members. The Commission believes that, overall, the changes create fair and equitable procedures for disciplining members for floor decorum violations because the violations are clearly outlined in the Exchange rules and the punishment is commensurate with the nature of the violation. The Commission also believes that it is appropriate for disciplinary action to be taken by a subcommittee of at least three members of the Exchange since this provision creates a smaller decision making group which will help to ensure that decisions are made more quickly and effectively, and since this

provision provides for adequate review of such subcommittee action. The Commission also believes that the rules permitting summary action by a Committee member or subcommittee member, in conjunction with two other floor officials, represent an appropriate balance between the need for summary action and the avoidance of arbitrary or capricious sanctions.

In addition, the changes provide for the appeal of sanctions and exclusions to the full Floor Procedure Committee and then to the Executive Committee. The proposed changes provide that the reviewing body may affirm, reverse, or modify a previous determination. The Commission believes that the proposed rule changes will, therefore, create fair procedures for review of decisions on appeal in accordance with the Act as two levels of review are put in place.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposed changes to the Exchange's floor decorum provisions are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-MSE-93-15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-31777 Filed 12-28-93; 8:45 am]
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[Release No. 34-33363; File No. SR-NASD-93-71]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Assessments and Fees on Members

December 21, 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 December 2, 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 as described

⁸ 15 U.S.C. 78s(b)(2) (1988).

⁹ 17 CFR 200.30-3(a)(12) (1991).

in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. 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 a rule change to amend Schedule A to the By-Laws to adjust the amount of credit applied to the entire calendar year 1993 as set forth in Subsection 1(d) of Schedule A, which is currently 62%, to 67%, and to credit the adjusted increase against member firms' 1994 assessments.

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

Pursuant to Article VI of the By-Laws of the Corporation, the NASD requires its members to pay an annual assessment fee based on gross income as defined by Schedule A, Section 1 to the By-Laws.¹ The NASD also allows a credit against such assessment pursuant to Subsection 1(d). In accordance with the NASD's shift from a fiscal to a calendar budget year in 1991, the NASD calculates the gross income assessment from the gross income reported for the calendar or fiscal year preceding the NASD's calendar budget year. Based on final gross income reports for 1992, the NASD in 1993 amended the amount of credit set forth in Subsection 1(d) of Schedule A to the By-Laws from 59% to 62% to reflect the assessment revenue budgeted for 1993.²

¹ NASD Manual, Schedule A to the By-Laws, Sec. 1(d), (CCH) ¶ 1752.

² See Securities Exchange Act Release No. 32289 (May 10, 1993), 58 FR 28905 (May 17, 1993), (approving file SR-NASD-93-30).

However, because overall 1993 revenue for the NASD is exceeding budget projections, the NASD believes that the credit against the gross income assessment should be raised from 62% to 67%. This increase will result in an adjustment to 1993 member assessments which will be credited against member firms' 1994 assessments. This proposed rule change, therefore, amends the amount of the credit set forth in Section 1(d) of Schedule A to the By-Laws from 62% to 67% to reflect the need for lower assessment revenue for 1993 in view of the realization of higher revenues than budgeted from other sources, principally corporate financing and Nasdaq issuer entry fees. The practical effect of the proposed rule change is that members will be assessed a smaller amount on 1992 gross income to cover 1993 operating costs, and this amount will be realized by members in 1994 in the form of a credit against 1994 assessments.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act,³ which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among members in that the proposed rule change equitably returns on a pro-rata basis to members a portion of revenues not needed for 1993 operations or corporate financing goals.

(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

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act and Subparagraph (e) of Rule 19b-4 promulgated thereunder in that it constitutes a due, fee, or other charge imposed by a self-regulatory organization.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the

Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference 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 the file number in the caption above and should be submitted by January 19, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-31778 Filed 12-28-93; 8:45 am]
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[Release No. 34-33368; International Series No. 624; File No. SR-NYSE-93-44]

Self-Regulatory Organizations; Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to European Portfolio Market Index Target-Term Securities

December 22, 1993

I. Introduction

On November 3, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² filed with the Securities and Exchange Commission ("SEC" or

"Commission") a proposed rule change to list and trade Market Index Target-Term Securities ("MITTS"),³ the return on which is based upon a portfolio of securities of European companies ("European Portfolio").⁴ Notice of the proposal appeared in the *Federal Register* on November 15, 1993.⁵ No comment letters were received on the proposed rule change. On December 16, 1993, the NYSE filed Amendment No. 1 to the proposed rule change.⁶ This order approves the proposal.

II. Description of the Proposal

Under Section 703.19 of the Exchange's Listed Company Manual ("Manual"), the NYSE may approve for listing securities which can not be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, and warrants.⁷ The NYSE is now proposing under Section 703.19 of the Manual to list for trading MITTS based on the

³ "MITTS" and "Market Index Target-Term Securities" are service marks of Merrill Lynch & Co., Inc. ("Merrill Lynch").

⁴ The European Portfolio is a static portfolio consisting of 24 equity securities listed as (1) common shares outside of the United States in the countries having the greatest trading volume for the shares; (2) common shares in the United States; or (3) as American Depositary Receipts ("ADRs") in the United States. An ADR is a negotiable receipt which is issued by a depository, generally a bank, representing shares of a foreign issuer that have been deposited and are held, on behalf of holders of the ADRs, at a custodian bank in the foreign issuer's home country. The securities which comprise the European Portfolio are securities issued by corporations formed under the laws of France, Germany, Italy, Netherlands, Spain, Sweden, Switzerland, and United Kingdom.

⁵ See Securities Exchange Act Release No. 33168 (November 9, 1993), 58 FR 60227 (November 15, 1993).

⁶ Amendment No. 1 to the proposed rule change altered the European Portfolio by replacing the five securities that were ADRs traded on the OTC Bulletin Board Service operated by the National Association of Securities Dealers, Inc. ("NASD Bulletin Board"), with the equity securities underlying such ADRs. Four of these new component shares trade in Germany (Bayer AG, Deutsche Bank AG, Hoechst AG, and Siemens AG) and one trades in Switzerland (Nestle, S.A.). Amendment No. 1 also states that if Merrill Lynch, Pierce, Fenner & Smith Inc. ("MLPFS"), the affiliate of Merrill Lynch which will calculate the value of the European Portfolio, is required to use the bid and offer price for a portfolio security to determine the market price of such portfolio security, then MLPFS will not use any bid or offer price announced by MLPFS or any other affiliate of Merrill Lynch. See Letter from William Massey, Brown & Wood, to Richard Zack, Branch Chief, Office of Derivatives Regulation, Division of Market Regulation, Commission, dated December 16, 1993 ("December 16 Letter").

⁷ See Securities Exchange Act Release Nos. 29229 (May 23, 1991), 56 FR 24652 (May 31, 1991); and 28217 (July 18, 1990), 55 FR 30056 (July 24, 1990) ("Hybrid Approval Orders").

¹ 15 U.S.C. 78o-3 (1988).

² 17 CFR 240.19b-4 (1992).

European Portfolio ("European Portfolio MITTS").⁸

As with the Global Telecommunications MITTS, the European Portfolio MITTS will conform to the listing guidelines under Section 703.19 of the Manual, which provide that: (1) Issues must have a minimum public distribution of one million securities; (2) a minimum of 400 shareholders; (3) a minimum duration of one year; (4) a market value of at least \$4 million; and (5) otherwise comply with the NYSE's initial listing criteria.⁹ In addition, the Exchange will monitor the European Portfolio MITTS to verify compliance with the Exchange's continued listing criteria.¹⁰ MITTS are non-callable senior hybrid debt securities of Merrill Lynch that provide for a single payment at maturity, and will bear no periodic payments of interest. At maturity, a holder of a MITT is entitled to receive from the issuer 90% of the principal amount plus an amount based upon the change in the market value of a stock index or portfolio. European Portfolio MITTS are cash-settled in that they do not give the

⁸ The Commission recently approved the listing and trading on the Exchange of MITTS based upon a global portfolio of securities representing telecommunications companies ("Global Telecommunications MITTS"). See Securities Exchange Act Release No. 32840 (September 2, 1993), 58 FR 47485 (September 9, 1993) ("Exchange Act Release No. 32840").

⁹ The hybrid listing standards in Section 703.19 of the Manual are intended to accommodate listed companies in good standing, their subsidiaries and affiliates, and non-listed equities which meet the Exchange's original listing standards. Domestic issuers must also meet the earnings and net tangible assets criteria set forth in Section 102.01 and 102.02 of the Manual. Specifically, the minimum original listing criteria requires that issuers have: (1) 2,000 holders holding 100 shares or more or have 2,200 holders with an average monthly trading volume of 100,000 shares; (2) a public float of 1.1 million shares; (3) an aggregate public market value of \$18 million or total net tangible assets of \$18 million; and (4) earnings before taxes of \$2.5 million in the latest fiscal year and earnings before taxes of \$2 million in each of the preceding two fiscal years, or earnings before taxes of \$6.5 million in the aggregate for the last three fiscal years with a \$4.5 million minimum in the most recent fiscal year (all three years are required to be profitable).

¹⁰ The continued listing criteria for capital or common stock requires that: (1) The number of holders of 100 shares or more is equal to or greater than 1,200; (2) the number of publicly-held shares is equal to or greater than 600,000; (3) the aggregate market value of publicly-held shares is equal to or greater than \$5 million; (4) the aggregate market value of shares outstanding (excluding treasury stock) is equal to or greater than \$8 million and average net income after taxes for the past three years is equal to or greater than \$600,000; and (5) net tangible assets available to common stock are equal to or greater than \$8 million and average net income after taxes for the past three years is equal to or greater than \$600,000. In addition, the continued listing standards for bonds require that outstanding publicly-held bonds have an aggregate market value or principal amount equal to or greater than \$1 million. See Section 802 of the Manual.

holder any right to receive a portfolio security or any other ownership right or interest in the portfolio securities, although the return on the investment is based on the aggregate portfolio value of the European Portfolio securities.

According to the NYSE, European Portfolio MITTS will allow investors to combine the protection of a portion of the principal amount of the MITTS with potential additional payments based upon the performance of a portfolio of securities representing 24 highly capitalized companies throughout Europe encompassing a wide variety of products and services. In particular, the proposed European Portfolio MITTS will provide 90 percent principal protection of the original issue price at maturity with the opportunity to participate in any upside appreciation of the underlying European Portfolio. European Portfolio MITTS will mature in June 1999.

The European Portfolio consists of securities of 24 European companies that have significantly different levels of market capitalization, ranging from a high of approximately US\$57.8 billion for Royal Dutch Petroleum Company to a low of approximately US\$2.3 billion for Benetton Group S.p.A.¹¹ The securities in the European Portfolio include the ADRs of 17 European companies,¹² the stocks of two European companies listed and trading on the Exchange,¹³ and the stocks of five other European companies listed and trading outside of the United States.¹⁴ The average daily trading volume for the components of the European Portfolio for the period from July 1, 1993, through August 31, 1993, ranged from a high of approximately 1.36 million ADR shares for Royal Dutch Petroleum Company, to

¹¹ These values are as of December 6, 1993.

¹² Each of the ADRs is either listed or traded on, or traded over the facilities of, U.S. securities markets. The ADRs represent Alcatel Alsthom Compagnie Generale d'Electricite; Banco Santander, S.A.; Benetton Group S.p.A.; British Petroleum Company, plc; British Telecommunications plc; Cadbury Schweppes plc; Grand Metropolitan, plc; Hanson plc; L.M. Ericsson Telephone Co., Inc.; Reuters Holding plc; Rhone-Poulenc S.A.; Societe Nationale Elf Aquitaine; Telefonica de Espana; Total S.A.; Unilever plc; Vodaphone Group plc; and Waste Management International plc.

¹³ Philips Electronics N.V., and Royal Dutch Petroleum Company.

¹⁴ The five foreign stocks, none of which are listed or trading on, or traded over the facilities of, U.S. securities markets, represent Bayer AG; Deutsche Bank AG; Hoechst AG; Nestle S.A.; and Siemens AG. ADRs representing each of these companies trade in the U.S. through the NASD Bulletin Board, however, none of those ADRs are subject to last sale reporting requirements and therefore, for purposes of calculating the settlement value of the European Portfolio, the underlying stock values have been substituted for the ADRs in the European Portfolio pursuant to Amendment No. 1. See December 16 Letter, *supra* note 6.

a low of approximately 3,100 ADR shares for Unilever plc. In addition, the public float¹⁵ as of December 6, 1993 for the securities comprising the global portfolio ranged from a high of approximately US\$55.5 billion for Royal Dutch Petroleum Company to a low of approximately US\$583 million for Benetton Group S.p.A.¹⁶

At the outset, each of the securities in the European Portfolio will have equal representation. Specifically, each security included in the portfolio will be assigned a multiplier on the date of issuance so that the security represents an equal percentage of the value of the entire portfolio on the date of issuance. The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price, to be included in the calculation of the portfolio. Accordingly, each of the 24 companies included in the European Portfolio will represent approximately 4.167 percent of the total portfolio at the time of issuance.

The multiplier for each security in the European Portfolio will generally remain unchanged except for limited adjustments that may be necessary as a result of stock splits or stock dividends.¹⁷ There will be no adjustments to the multipliers to reflect cash dividends paid with respect to a portfolio security. In addition, no adjustments of any multiplier of a portfolio security will be made unless such adjustment would require a change of at least 1% in the multiplier then in effect.

If the issuer of a security included in the European Portfolio no longer exists, whether for reason of a merger, acquisition or similar type of corporate control transaction, then Merrill Lynch will assign to that security a value equal to the security's final value for the purposes of calculating portfolio values. For example, if a company included in the portfolio is acquired by another company, Merrill Lynch shall thereafter assign a value to the shares of the acquired company's securities equal to

¹⁵ As used herein, "public float" is defined as total outstanding shares less treasury stock, minority interests, and insider holdings. *Id.*

¹⁶ *Id.*

¹⁷ Merrill Lynch will adjust the multiplier of any portfolio security if the security is subject to a stock split or reverse split or similar adjustment in the case of an ADR, to equal the product of the number of shares issued with respect to one share of the portfolio security, or the number of receipts issued with respect to an ADR, and the prior multiplier. In the case of a stock dividend, the multiplier will be adjusted so that the new multiplier will equal the former multiplier plus the product of the number of shares of such portfolio security issued with respect to one share of the portfolio security and the prior multiplier.

the value per share at which time the acquisition takes place.

If the issuer of a portfolio security is in the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the European Portfolio so long as a market price for such security is available. If a market price is no longer available for a portfolio security, including, but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the value of the portfolio security will be assigned a value of zero in connection with calculating the daily portfolio value and the closing portfolio value of the European Portfolio, for so long as no market price exists for that security.¹⁸

The value of the European Portfolio will initially be calculated once a day by MLPFS. These values will be disseminated to investors once a day after 5 p.m. Eastern Standard Time. The portfolio value, for any day, will equal the sum of the products of the most recently available market prices and the applicable multipliers for the portfolio securities.¹⁹ In addition, the Securities

¹⁸ Merrill Lynch will not attempt to find a replacement stock or to compensate for the extinction of a security due to bankruptcy or a similar event.

¹⁹ The procedure for determining the value of the European Portfolio will be the same as that approved by the Commission for Global Telecommunications MITS (see Exchange Act Release No. 32840, *supra* note 8). See December 16 Letter, *supra* note 6. Specifically, the market price used for calculation of the portfolio value is the last reported sale price if the portfolio security is listed and traded on a national securities exchange, or is traded through the National Association of Securities Dealers, Inc. ("NASD") Automated Quotation ("NASDAQ") system's National Market System ("NMS"). If the portfolio security is a security of a foreign issuer or is an ADR that is not listed in a national securities exchange in the U.S. or is not a NASDAQ-NMS security, then the market price is the last reported sale price on the securities exchange on which the portfolio security is listed having the greatest volume of trading for the preceding calendar month as determined by MLPFS, provided that if such last reported sale price is for a transaction that occurred more than 4 hours prior to the close of such exchange, then the market price is the average of the last available bid and offer price on such exchange. If a foreign-issued portfolio security is not listed or trading on any securities exchange or if the last reported sale price or bid and offer are not obtainable, then the market price is the last reported sale price on the OTC market with the greatest volume of trading as determined by MLPFS. However, if such last reported sale price is for a transaction which occurred more than 4 hours prior to when trading in such OTC market typically ends, then the market price is the average of the last available bid and offer price of the three most active dealers, as selected by MLPFS. If MLPFS is required to use the bid and offer price for a portfolio security to determine the market price of such portfolio security, then MLPFS will not sue any bid or offer price announced by MLPFS or any other affiliate of Merrill Lynch. See December 16, 1993 Letter, *supra* note 6.

Pricing Service ("SPS"), a division of MLPFS, will calculate and regularly publish the portfolio value during the term of the European Portfolio MITS. Moreover, MLPFS and SPS have undertaken to implement certain surveillance and compliance procedures with respect to the dissemination of the portfolio value, requiring that the portfolio value be announced only through public dissemination and restricting the access of the MLPFS trading desk to the portfolio value determined by SPS.

European Portfolio MITS will be denominated in U.S. dollars²⁰ and will entitle the owner at maturity²¹ to receive an amount based upon the percentage change in the value of the European Portfolio from the date of issuance to the "final calculation period," subject to a minimum repayment amount of 90% of the original principal amount. The "final calculation period" is a specified number of days prior to the maturity date.²² The average value of the European Portfolio during the final calculation period will be used in calculating the amount holders will receive upon maturity.²³

If the market value of the portfolio has declined, the holder will receive not less than 90% of the original principal amount of the security. For example, if the market value of the portfolio used to calculate the amount payable at maturity has declined more than ten percent, the holders of the European Portfolio MITS will receive 90 percent of the principal amount of the securities. The payment in addition to the minimum principal amount at maturity is based on changes in the value of the European Portfolio, but does not reflect the payment of dividends on the securities that comprise the European Portfolio.

²⁰ The prices of the foreign stock components of the European Portfolio are quoted in currencies other than U.S. dollars. Therefore, investments in securities indexed to the value of non-U.S. securities may involve greater risks, subject to fluctuations of foreign exchange rates, future foreign political and economic developments, and the possible imposition of exchange controls or other foreign governmental laws or restrictions applicable to such investments.

²¹ The maturity date for European Portfolio MITS will be in June 1999.

²² In particular, the final calculation period for European Portfolio MITS will consist of the 90 business days prior to maturity of the security. Within this time period, Merrill Lynch will use for calculation purposes, the first 45 business days that occur without a market disruption event.

²³ The closing value for the European Portfolio will be determined by MLPFS and will equal the sum of the products of the average market price and the applicable multiplier for each portfolio security over the final calculation period.

Like the Global Telecommunication MITS listed on the NYSE, European Portfolio MITS may not be redeemed prior to maturity and are not callable by the issuer. Holders of European Portfolio MITS will be able to cash-out of their investment by selling the security on the NYSE. The Exchange anticipates that the trading value of the security in this secondary trading market will depend in large part on the value of the securities comprising the European Portfolio and also on such other factors as the level of interest rates, the volatility of the value of the European Portfolio, the time remaining to maturity, dividend rates, and the creditworthiness of the issuer, Merrill Lynch.²⁴

Because European Portfolio MITS are linked to a portfolio of equity securities, the NYSE's existing equity floor trading rules will apply to the trading of European Portfolio MITS. First, pursuant to NYSE Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading European Portfolio MITS.²⁵ Second, consistent with NYSE Rule 405, the Exchange will further require that a member or member firm specifically approve a customer's account for trading European Portfolio MITS prior to, or promptly after, the completion to the transaction. Third, European Portfolio MITS will be subject to the equity margin rules of the Exchange. Fourth, in accordance with the NYSE's Hybrid Approval Orders, the Exchange will prior to trading European Portfolio MITS, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in European Portfolio MITS and highlighting the special risks and characteristics of the European Portfolio MITS.²⁶

III. Commission Findings and Conclusions

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

²⁴ Merrill Lynch will deposit registered global securities representing European Portfolio MITS with its depository, the Depository Trust Company ("DTC"), so as to permit book-entry settlement of transactions by participants in DTC.

²⁵ NYSE Rule 405 requires that every member member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

²⁶ See Hybrid Approval Orders, *supra* note 7

exchange, and, in particular, the requirements of section 6(b)(5). Specifically, the Commission believes that providing for exchange-trading of European Portfolio MITTS will offer a new and innovative means of participating the market for European securities. In particular, the Commission believes that European Portfolio MITTS will permit investors to gain equity exposure in European companies, while at the same time, limiting the downside risk of the original investment. For the reasons discussed in the Commission's order approving the Global Telecommunications MITTS, the Commission finds that the listing and trading of European Portfolio MITTS is in the public interest.²⁷

As with Global Telecommunications MITTS, European Portfolio MITTS are not leveraged instruments, however, their price will still be derived and based upon the underlying linked security. Accordingly, the level of risk involved in the purchase or sale of a European Portfolio MITTS is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, as with the Global Telecommunications MITTS, the Commission has several specific concerns regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to European Portfolio MITTS. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of European Portfolio MITTS. Moreover, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with European Portfolio MITTS.

The Commission notes that MLPFS intends to publish the value of the European Portfolio once each business day after 5 p.m. Eastern Standard Time for dissemination to electronic reporting services as well as to newspapers and trade publications. As with the Global Telecommunications MITTS, Merrill Lynch asserts that the value of a MITT does not necessarily correlate with the intra-day price moves related to the underlying component securities,

largely as a result of the time value to maturity of the MITT.²⁸

As a general matter, the Commission continues to believe that for new derivative products, real-time dissemination of the value of the underlying instrument should be provided to all investors. Nevertheless, the Commission has determined to permit European Portfolio MITTS to trade without real-time dissemination at this time for several reasons. First, a MITT is not a leveraged product that has its value determined primarily from the underlying individual security or security index but rather guarantees recoupment of 90% of the principal amount. Second, factors such as the creditworthiness of the issuer, in addition to price movements in the underlying securities will be relevant in pricing the European Portfolio MITTS. Third, the European Portfolio MITTS should, at least prior to expiration, trade more like a bond or debt security, based on the issuer's ability to perform rather than the value of the European Portfolio.²⁹ Accordingly, the Commission believes that real-time dissemination of the aggregate market value of the underlying European Portfolio is not necessary at this time but would nevertheless expect Merrill Lynch, along with the NYSE, to monitor the product to determine if increased reporting is necessary especially as the product approached maturity.³⁰

The Commission realizes that European Portfolio MITTS are dependent-upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the Exchange's continued listing standards which require issuers to maintain an aggregate market value of \$5 million for its publicly-held shares.³¹ In addition, the Exchange's hybrid listing standards further require that European Portfolio MITTS have at least \$4 million in market value. In any event, financial information regarding

Merrill Lynch, in addition to the information on the issuers of the underlying securities comprising the European Portfolio, will be publicly available.³²

The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. As discussed in the approval order for the Global Telecommunications MITTS, the Commission believes this concern is minimal given the size of European Portfolio MITTS issuance in relation to the net worth of Merrill Lynch.³³

The Commission believes that the listing and trading of European Portfolio MITTS should not unduly impact the market for the underlying securities comprising the European Portfolio. First, the underlying securities comprising the portfolio are either well-capitalized stocks, or in the case of ADRs, represent in dollar terms substantial market value.³⁴ Second, the issuers of the underlying securities comprising the European Portfolio are subject to reporting requirements under the Act, and the majority of the portfolio securities are either listed or traded on, or traded over the facilities of, U.S. securities markets.³⁵ Third, the Exchange has surveillance agreements in place for a large percentage of the securities in the European Portfolio for the sharing of market information.³⁶ This in addition to the NYSE's surveillance procedures will serve to deter as well as detect any potential manipulation. Fourth, Merrill Lynch will not include quotations made by or through Merrill Lynch or its affiliates when calculating the value of the European Portfolio. Lastly, MLPFS has agreed to restrict information with respect to all calculations of portfolio securities so that individuals trading such securities at MLPFS will only be able to receive such information through public means and not prior to its release to the public.³⁷

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of

²⁸ *Id.*

²⁹ As the Global Telecommunications MITTS, Merrill Lynch has agreed to monitor the volatility of the market price of the European Portfolio MITTS in relation to the underlying European Portfolio and to discuss with the Commission the need to implement more frequent portfolio value dissemination in the event of an increase in intra-day volatility. See Letter from Markus Wiltshire, Brown & Wood, to Brad Ritter, Attorney, Office of Derivatives Regulation, Division of Market Regulation, Commission, dated December 22, 1993 ("December 22 Letter").

³⁰ Notwithstanding the above, the Commission still believes that it is useful and beneficial for all investors and market participants to have access to the value of the portfolio on a real-time basis and encourages the NYSE and Merrill Lynch to further explore the possibilities in this area.

³¹ See *supra* note 10.

³² The companies that comprise the European Portfolio are either reporting companies under the Act or subject to a limited exemption under Rule 12g3-2(b) of the Act. See December 22 Letter, *supra* note 29.

³³ See Exchange Act Release No. 32840, *supra* note 8.

³⁴ See *supra* note 11 and accompanying text.

³⁵ The Commission notes that 19 of the 24 component securities are traded on either the NYSE or NASDAQ-NMS.

³⁶ See Securities Exchange Act Release No. 32840, *supra* note 8.

³⁷ See December 22 Letter, *supra* note 29.

²⁷ See Exchange Act Release No. 32840, *supra* note 8.

publication of notice thereof in the **Federal Register**. The Commission finds that the proposal, as amended, is substantially similar to the Global Telecommunications MITTS which were previously approved by the Commission. Additionally, the Commission has not received any comments, and has not been made aware of any problems that have arisen with respect to the trading of the Global Telecommunications MITTS.

Furthermore, Amendment No. 1 further minimizes any regulatory concerns the Commission might have with respect to the pricing of the components of the European Portfolio. By substituting the underlying foreign stocks for the five ADRs originally proposed, each of the securities in the European Portfolio will be subject to last sale reporting requirements either in the U.S. (for the 17 ADRs and the two NYSE-listed component securities) or in the country where the greatest volume of trading for the previous calendar month has occurred (for the five securities traded outside of the U.S.).³⁸ Finally, the Exchange's original Global Portfolio MITTS proposal as well as this proposal were each published in the **Federal Register** for the full 21-day comment period without any comments being received by the Commission. Therefore, the Commission believes it is consistent with section 6(b)(5) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. 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 NYSE. All submissions should refer to File No. SR-NYSE-93-44 and should be submitted by January 19, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,³⁹ that the proposed rule change (File No. SR-NYSE-93-44) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-31774 Filed 12-28-93; 8:45 am]
BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 19970;
811-5247]

SunAmerica Multi-Asset Portfolios, Inc.; Application for Deregistration

December 21, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: SunAmerica Multi-Asset Portfolios, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 14, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 18, 1994 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 733 Third Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the

application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Maryland corporation. On July 20, 1987, applicant (then known as Integrated Multi-Asset Portfolios, Inc.) filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on November 19, 1987, and applicant commenced its initial public offering on that date.

2. On March 31, 1993, applicant's board of directors approved a plan of reorganization whereby applicant agreed: (a) To transfer all of its assets and liabilities of its SunAmerica Total Return Fund series ("Total Return") to SunAmerica Balanced Assets Fund ("Balanced Assets"), a newly created portfolio of SunAmerica Equity Funds, in exchange for shares of beneficial interest of Balanced Assets; and (b) to transfer all of its assets and liabilities of its SunAmerica Diversified Income series ("Diversified Income") to SunAmerica Diversified Income Fund ("Income Fund"), a newly created portfolio of SunAmerica Income Funds, in exchange for shares of beneficial interest of Income Fund. In accordance with rule 17a-8 of the Act, applicant's directors determined that the sale of applicant's assets to the acquiring funds was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.¹

3. Preliminary proxy materials soliciting shareholder approval of the reorganization were filed with the SEC on May 17, 1993 for Total Return, and on June 17, 1993 for Diversified Income. Definitive proxy materials for both series were filed with the SEC on July 29, 1993. Proxy materials were distributed to the applicant's shareholders of record on or about July 29, 1993. The reorganization was approved, in accordance with Maryland law, by applicant's shareholders at meetings held on September 23, 1993.

¹ Applicant and the acquiring funds may be deemed to be affiliated persons of each other by reason of having a common investment advisor, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a-8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment advisor, common directors, and/or common officers.

³⁸ See December 16 Letter, *supra* note 6.

³⁹ 15 U.S.C. 78s(b)(2) (1988).

⁴⁰ 17 CFR 200.30-3(a)(12) (1992).

4. Immediately prior to the reorganization, applicant had 2,058,959.461 shares of common stock of Total Return outstanding (having an aggregate net asset value of \$32,675,686.64 and a per share net asset value of \$15.87) and 17,887,412.246 shares of common stock of Diversified Income outstanding (having an aggregate net asset value of \$90,331,431.84 and a per share net asset value of \$5.05). On September 24, 1993, applicant transferred all of the assets and liabilities of Total Return to Balanced Assets. In exchange, applicant received 2,058,959.461 shares of common stock of Balanced Assets, having an aggregate net asset value of \$32,675,686.64 and a per share net asset value of \$15.87. On October 1, 1993, applicant transferred all of the assets and liabilities of Diversified Income to Diversified Fund. In exchange, applicant received 17,887,412.246 shares of common stock of Diversified Fund, having an aggregate net asset value of \$90,331,431.84 and a per share net asset value of \$5.05. The shares received in exchange for applicant's assets were distributed to applicants shareholders *pro rata* in accordance with their respective interests in applicant.

5. The expenses in connection with the reorganization consisted of legal, accounting, printing, and proxy materials expenses, which are not expected to exceed \$50,000 for each of Total Return and Diversified Income. These expenses were borne by applicant and the acquiring funds.

6. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-31773 Filed 12-28-93; 8:45 am]
BILLING CODE 6717-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2685]

Oregon; Amendment #2; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage as a result of an earthquake on

September 20, 1993, and subsequent aftershocks. Applications from victims in the previously designated counties will be accepted through January 5, 1994.

All other information remains the same, i.e., the termination date for filing applications for economic injury is July 6, 1994.

Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.

Dated: December 8, 1993.

Erskine B. Bowles,
Administrator.

[FR Doc. 93-31798 Filed 12-28-93; 8:45 am]
BILLING CODE 8025-01-M

Interest Rates

The interest rate on section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97-35) and the SBA share of immediate participation loans is 6½ percent for the fiscal quarter beginning January 1, 1994.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8-4(d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the January-March quarter of FY 94, this rate will be 5½ percent.

John R. Cox,
Acting Assistant Administrator for Financial Assistance.

[FR Doc. 93-31799 Filed 12-28-93; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1922]

Shipping Coordinating Committee Subcommittee for the Prevention of Marine Pollution; Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on March 2, 1994, at 9:30 a.m. in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the thirty-fifth session of the Marine Environment Protection Committee (MEPC 35) of the International Maritime Organization (IMO) to be held from March 7-11, 1994. Proposed U.S. positions on the agenda items for MEPC 35 will be discussed.

The major items for discussion will be the following:

1. Prevention of oil pollution. Work will continue on guidelines for implementation of Regulations 13F and 13G to Annex I of The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78). This will include guidelines for structural and operational requirements for existing ships, equivalencies for double-hulls for new ships, and guidelines for enhanced inspections.

2. Implementation of the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC). An IMO working group will address topics such as development of model pollution response courses and the practical, application of OPRC to hazardous and noxious substances.

3. Follow-up action to the United Nations Conference on Environment and Development (UNCED). An MEPC working group will examine IMO's role in implementation of UNCED.

4. Unwanted aquatic organisms in ballast water. A working group will discuss a possible technical annex to MARPOL 73/78 to prevent the introduction of exotic species through discharge of ballast water.

5. Enforcement of Pollution Conventions. A working group will consider refuse recordkeeping amendments to Annex V of MARPOL 73/78 proposed by the United States.

6. The future work program of the MEPC.

Members of the public may attend these meetings up to the seating capacity of the room.

For further information or documentation pertaining to the SPMP meeting, contact Lieutenant Commander M. L. McEwen, U.S. Coast Guard Headquarters (G-MEP-3), 2100 Second Street, SW., Washington, DC 20593-0001, Telephone: (202) 267-0423.

Dated: December 15, 1993.

Geoffrey Ogden,
Chairman, Shipping Coordinating Committee.
[FR Doc. 93-31646 Filed 12-28-93; 8:45 am]
BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended December 17, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49312*Date filed:* December 15, 1993*Parties:* Members of the International Air Transport Association*Subject:* TC3 Reso Reso/P 0560 dated December 10, 1993, TC3 (except US Territories) Expedited Resos R-1 R-26*Proposed Effective Date:* January 31, 1994**Docket Number: 49313***Date filed:* December 15, 1993*Parties:* Members of the International Air Transport Association*Subject:* TC31 Reso/P dated November 16, 1993, Circle Pacific resos, r-1—001ff r-2—07c*Proposed Effective Date:* April 1, 1994**Docket Number: 49319***Date filed:* December 16, 1993*Parties:* Members of the International Air Transport Association*Subject:* TC2 Reso/P 1504 dated November 5, 1993, Within Europe (Not applicable-EC) r-1 to r-25; TC2 Reso/P 1505 dated November 5, 1993, Within Europe (Applicable-EC) r-26 to r-42; TC2 Reso/P 1506 dated November 5, 1993, Within Europe (Applicable-EC) r-43 to r-51*Proposed Effective Date:* April 1, 1994**Docket Number: 49320***Date filed:* December 16, 1993*Parties:* Members of the International Air Transport Association*Subject:* TC23 Reso/P 0622 dated November 5, 1993, Middle East—TC3 Resos r-1 to r-29*Proposed Effective Date:* April 1, 1994**Docket Number: 49321***Date filed:* December 16, 1993*Parties:* Members of the International Air Transport Association*Subject:* TC3 Reso/P 0562 dated December 14, 1993, TC3 (US Territories) r-1 to r-3*Proposed Effective Date:* January 31, 1994**Docket Number: 49322***Date filed:* December 16, 1993*Parties:* Members of the International Air Transport Association*Subject:* TC3 Reso/P 0563 dated December 14, 1993, Expedited TC3 (US Territories) Reso 085t*Proposed Effective Date:* February 1, 1994**Docket Number: 49323***Date filed:* December 16, 1993*Parties:* Members of the International Air Transport Association*Subject:* TC3 Reso/P 0561 dated December 14, 1993, Expedited TC3 (except US Territories) Resos r-1 to r-6*Proposed Effective Date:* February 1,

1994

Docket Number: 49324*Date filed:* December 16, 1993*Parties:* Members of the International Air Transport Association*Subject:* COMP Telex Mail Vote 662, Amend Rounding Units for Iceland
Proposed Effective Date: January 5, 1994**Phyllis T. Kaylor,***Chief, Documentary Services Division.*

[FR Doc. 93-31729 Filed 12-28-93; 8:45 am]

BILLING CODE 4910-62-P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended December 17, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49325*Date filed:* December 17, 1993*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* January 14, 1994*Description:* Application of Presidential Air, pursuant to section 401(d)(3) of the Act, and subpart Q of the Regulations, requests authority to engage in interstate and overseas charter air transportation of persons, property, and mail, between any point in any state or the United States or the District of Columbia, or any territory or possession of the United States and any point outside thereof.**Docket Number: 49326***Date filed:* December 17, 1993*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* January 14, 1994*Description:* Application of Volga-Dnepr J.S. Cargo Airlines, pursuant to section 402 of the Act and subpart Q of the Regulations applies for a foreign air carrier permit to engage in scheduled and charter cargo service between the Russian Federation and the United States.**Docket Number: 48265***Date filed:* December 14, 1993*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* January 11, 1994*Description:* Amendment No. 1 to the application of LTE International Airways, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, requests amendment of Exhibits 8 and 11 to its original application with respect to Ownership and Management.**Docket Number: 45059***Date filed:* December 13, 1993*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* January 10, 1994*Description:* Motion of Continental Micronesia, Inc., pursuant to Rules 5 and 18 of the Department's rules of practice, and section 401 of the Act and subpart Q of the regulations, moves for leave to adopt Continental's application in this docket as its own and to amend the application to give Continental Micronesia the same authority Continental had sought to secure flexible route authority available under the U.S. Philippines bilateral air transport agreements.**Phyllis T. Kaylor,***Chief, Documentary Services Division.*

[FR Doc. 93-31728 Filed 12-28-93; 8:45 am]

BILLING CODE 4910-62-P

Federal Aviation Administration**Proposed Advisory Circular 21.24—T.B.D.: Primary Category Aircraft****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Notice of availability.**SUMMARY:** The FAA has prepared a proposed Advisory Circular (AC) to provide guidance in complying with the procedures to certificate primary category aircraft. The proposed AC discusses type, production, and airworthiness certification, and associated maintenance procedures and operating limitations that are unique to primary category aircraft.**DATES:** Comments must be received on or before February 28, 1994.**ADDRESSES:** Comments on proposed AC 21.24—T.B.D. may be mailed or delivered to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Policy and Procedures Branch, AIR-110; 800 Independence Avenue, SW., room 805; Washington, DC 20591. Copies of the proposed AC may be obtained from

Policy and Procedures Branch, Aircraft Engineering Division, AIR-100.

FOR FURTHER INFORMATION CONTACT: Manuel Macedo, Policy and Procedures Branch, AIR-110, 800 Independence Ave., SW., room 804; Washington, DC 20591, telephone (202) 267-9566.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications must identify the AC number and must be submitted to the address specified above. All communications received on or before the closing date for comments will be considered before issuing AC 21.24-T.B.D.

Background

On March 7, 1989, the FAA issued a Notice of Proposed Rulemaking (NPRM), No. 89-7 (54 FR 9738), proposing the adoption of a new category of aircraft to be known as primary category aircraft. These aircraft were proposed to be of simple design and intended for pleasure and personal use only. As described in the notice, primary category aircraft (airplanes, gliders, rotorcraft, manned free balloons, etc.) would be unpowered or powered by a single naturally aspirated engine having a certificated takeoff rating of 200 shaft horsepower or less, would have a maximum weight of 2,500 pounds or less, and would have an unpressurized cabin. The notice proposed to permit pilot-owners of primary category aircraft to do certain maintenance procedures, including inspections, on their own aircraft after receiving the appropriate training. The notice also proposed to permit the conversion of aircraft that are within the primary category engine and weight limits from standard category to primary category. The notice proposed to allow the use of primary category aircraft for pilot training and to prohibit the use of all primary category aircraft for compensation or hire.

On August 1, 1991, the FAA issued a Supplemental Notice of Proposed Rulemaking (SNPRM) (56 FR 36972), to correct a statement in the original NPRM that indicated that Part 36 noise requirements do not apply to primary category aircraft. The SNPRM explained that the FAA has no discretion in the application of noise requirements; Part 36 applies to primary category aircraft.

On August 1, 1991, the FAA also published Notice No. 89-7A (56 FR 36976), reopening the comment period to address new information and

proposals presented to the FAA. The reopening was based on a February 1990 meeting between representatives of the Experimental Aircraft Association (EAA), the Aircraft Owners and Pilots Association, and the FAA. Because of that meeting and subsequent EAA comments, the FAA reopened the comment period to solicit comments on several EAA-requested changes from the original March 1989 NPRM. Those proposed changes were: changing the maximum weight criteria from 2,500 to 2,700 pounds; replacing the 200-horsepower engine limitation with a 61-knot stall speed limitation for airplanes and a 6-pound per square foot main rotor disc maximum load for rotorcraft; allowing the use of primary category aircraft for primary pilot training and for rental if the aircraft is maintained by an FAA-certificated mechanic or repair station; and allowing the use of primary category aircraft that are maintained by the pilot-owner, rather than an FAA certificated mechanic or repair station, to provide limited checkouts for other primary category pilots.

The final rule, Amendments 21-70, 36-19, 43-34, 91-230, and 147-6 to FAR Parts 21, 36, 43, 91, and 147, was published on September 9, 1992 (57 FR 41360), and was effective December 31, 1992.

This AC provides an acceptable means, but not the only means, of complying with the primary category aircraft type certification requirements. This AC discusses type, production, and airworthiness certification, and associated maintenance procedures and operating limitations unique to primary category aircraft. This guidance material is neither mandatory nor regulatory in nature and does not constitute a regulation in itself. The Federal Aviation Regulations referenced in this AC are those that have been modified to include requirements unique to primary category aircraft. This AC does not discuss other general certification requirements that are common to all aircraft that also apply to primary category aircraft. Their absence from this AC may not be construed to imply that these other requirements are not applicable to primary category aircraft.

Comments received on the proposed AC may be examined before and after the closing date in Room 804, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m., weekdays.

How to Obtain Copies:

A copy of proposed AC 21.24-T.B.D., Primary Category Aircraft, may be obtained by contacting the person under "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC on December 21, 1993.

John K. McGrath,

*Manager, Aircraft Engineering Division,
Aircraft Certification Service.*

[FR Doc. 93-31697 Filed 12-28-93; 8:45 am]

BILLING CODE 4910-13-M

Request for Comments Regarding the Issuance of Experimental Airworthiness Certificates for the Purpose of Exhibition or Air Racing and Special Flight Authorizations (SFA)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: On July 9, 1993, the FAA established a moratorium on the processing of applications relating to non-type certificated aircraft, manufactured outside the United States, for experimental airworthiness certificates for the purpose of air racing or exhibition and requests for SFA. This action was necessary because of a proliferation of such applications and requests, which raised concerns that the FAA could not adequately surveil the aircraft. The FAA began a study to determine if adequate surveillance could be achieved through its current directives, policy statements, and advisory material. On August 18, 1993, the FAA lifted the moratorium and established interim requirements for certification and operations which are imposed as limitations on the operation of the subject aircraft. This notice requests public comment on what factors should be considered in establishing new limitations.

DATES: Comments must be submitted on or before February 14, 1994.

FOR FURTHER INFORMATION CONTACT:

Mr. John Hozella, Aircraft Manufacturing Division (AIR-200), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-7990.

SUPPLEMENTARY INFORMATION: There has been a recent dramatic increase in applications to the FAA for issuance of experimental airworthiness certificates under § 21.191(d), Exhibition, and § 21.191(e), Air Racing, of the Federal Aviation Regulations (FAR), as well as Special Flight Authorizations (SFA) under § 91.715 of the FAR, for non-U.S. manufactured aircraft for which type certificates under FAR § 21.29 have not been issued.

Little was known by the FAA concerning the design, manufacturing

processes, safety record, maintenance, or service history of these aircraft. Moreover, the FAA was concerned that these aircraft may be used for a purpose other than the purpose for which they were certificated, in violation of § 91.319(a)(1) of the FAR. The surge of applications and requests raises the prospect of a large increase of these aircraft operating in U.S. airspace, a dramatically different situation than when there were only a handful of these aircraft requiring FAA surveillance. The increase in requests for experimental airworthiness certificates and SFA's had an obvious impact on the FAA's limited resources, due to the necessity for FAA original airworthiness certification and surveillance of continued airworthiness and proficiency. With these limited resources available, if strong enforcement measures are imposed, "selective" enforcement would probably result due to the lack of inspector resources.

The FAA, therefore, has determined that, in the interest of safety, it must reassess the standards and limitations applicable to these aircraft. On July 9, 1993, the FAA placed a moratorium on the issuance of experimental airworthiness certificates and SFA's. Thereafter, the FAA studied how it could best resolve its safety concerns using existing directives, policy statements, and advisory material. On August 18, 1993, the FAA lifted the moratorium by establishing interim limitations on the operation of the subject aircraft.

This notice requests public comment on what factors need to be considered in order to address the safety concerns described above. Members of the public have suggested several possible means: limiting the number of aircraft certificated per year; appointing additional FAA designees to make findings of compliance for some certification functions; and limiting the purposes for which SFA's will be issued.

Another question revolves around the purpose of exhibition as stated in FAR § 21.191(d), "Exhibiting the aircraft's flight capabilities, performance, or unusual characteristics at air shows, motion picture, television, and similar productions, and the maintenance of exhibition flight proficiency, including (for persons exhibiting aircraft) flying to and from such air shows and productions." As noted above, operation of an experimental aircraft is limited to the purpose for which it was certificated. The FAA recognizes that aviation enthusiasts want to see a wide variety of aircraft based on historical significance or uniqueness, but there is

a question as to how many aircraft are necessary to fill this need. Many of the aircraft being imported are the same model, e.g. Aero Vodochody L-29, Antonov AN-2, Mikoyan M-15, Yakovlev Y-18, etc. The FAA also has been questioned as to what would constitute a reasonable limit on the number of aircraft that should be certificated for the purpose of exhibition, i.e., when does a particular model of aircraft cease to be unique?

Another concern is the fact that experience in the areas of certification, continued airworthiness, and pilot skills for these aircraft, both in the FAA and the general aviation public, is limited. The FAA solicits comments as to the appropriate minimum experience and training requirements necessary to properly maintain and pilot these aircraft. In the same vein, the FAA solicits comments as to how the continued airworthiness of these aircraft can be maintained, i.e., what is the availability (now and in the future) of replacement parts, what level of detail for the FAA-approved inspection program is necessary? The FAA also requests input on a means by which the applicant/FAA can identify which parts have life-limits and determine the current status of those life-limited parts.

There are no type ratings issued for these aircraft. Instead, the FAA issues a letter of authorization to a pilot for a specific model of aircraft. Some of these aircraft are piston-powered (over 800 hp) or turbine powered and were flown as fighter/tactical aircraft by the military of the country of origin. Considering the complexity, performance characteristics, and operational environment of these aircraft, it may be appropriate, in the interest of safety, to establish semi-annual flight reviews, a requirement for a first- or second-class medical certificate, and/or a currency requirement similar to the 90-day requirement in FAR § 61.57.

The FAA has received reports of experimental exhibition aircraft that are being used for purposes other than exhibition, e.g., executive/private transportation, used for compensation and hire, carrying passengers, cargo, sky diving. This is an abuse of the experimental aircraft regulations, which exist solely for the purpose described. Aircraft used for other purposes must be certificated to the appropriate design standards in the FAR. The FAA requests comments concerning any known abuses and comments regarding if this might suggest whether the purposes of experimental airworthiness certification should be expanded or further limited.

Some of the aircraft currently certificated for the purpose of exhibition

or air racing are not flown for these purposes. A proposal has been made to "grandfather" a few of these aircraft that received airworthiness certificates prior to the July 9, 1993, moratorium. The FAA requests input on a whether and how aircraft should be grandfathered, i.e., based on category or particular model of aircraft, date of original U.S. airworthiness certification. Additionally, comments are requested as to what specific operating limitations must be developed to define when and how the aircraft may be flown, i.e., only within 100 miles of the aircraft's base of operations, day visual flight rules (VFR) only.

The FAA welcomes comments on these issues and will take any comments received into consideration in revising the procedures and planning any future initiatives, including, when appropriate, instituting rulemaking. Comments must be submitted on or before the date stated in the "DATES" caption in this Notice. Interested parties can express their views by submitting written comments to the FAA, Aircraft Manufacturing Division (AIR-200), 800 Independence Ave., SW., Washington, DC, 20591.

Issued in Washington, DC on December 21, 1993.

Thomas E. McSweeney,

Director, Aircraft Certification Service.

[FR Doc. 93-31757 Filed 12-28-93; 8:45 am]

BILLING CODE 4910-13-M

Aircraft Overflight Issues in the State of Hawaii; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The Federal Aviation Administration (FAA) is investigating complaints regarding flight safety, aircraft noise and possible intrusive flights of helicopters in Hawaii. The FAA will conduct four public meetings in Hawaii on the islands of Oahu, Kauai, Maui and Hawaii on January 24, through January 27, 1994. The purpose of these meetings is to gather information relevant to aircraft safety and the impact of aircraft operations on Hawaiian residential communities, National and State parks, wildlife refuges areas, state natural area reserves, sanctuaries and areas of significant historic value. Interested persons will be given an opportunity to present their views, recommendations and comments concerning these issues in this public forum. All comments received will be considered in any future FAA actions, rules, or policy developments on aircraft operation and airspace use.

DATES: The public meetings will be held on January 24, 1994 on Oahu; January 25, 1994 on Kauai; January 26, 1994 on Maui; and January 27, 1994 on Hawaii. Written statements are invited and must be received by the FAA on or before February 15, 1994.

ADDRESSES: The public meetings will be held as follows:

Monday January 24, 1994, 5:30 pm to 8:30 pm; Oahu; Federal Aviation Administration, Flight Standards District Office, Honolulu International Airport, 135 Nakolo Place, Honolulu, Hawaii

Tuesday January 25, 1994, 5:30 pm to 8:30 pm; Kauai; Kauai War Memorial Convention Hall, 4191 Hardy Street, Lihue, Hawaii

Wednesday January 26, 1994, 5:30 pm to 8:30 pm; Maui; County Building (8th floor), 200 S. High Street, Wailuku, Hawaii

Thursday January 27, 1994, 5:30 pm to 8:30 pm; Hawaii; Hilo County Building, room 201, 25 Aupuni Street, Hilo, Hawaii

Persons unable to attend the meetings may mail their comments (in triplicate) to: Air Traffic Rules Branch, ATP-230, ATTN: Melodie De Marr, Aircraft Overflight Issues in the State of Hawaii, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at a meeting or questions regarding the subject matter of the meetings should be directed to Melodie De Marr, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591 telephone (202) 267-8783; telefax (202) 267-5809. Hawaiian residents may call John Gordon, the FAA Western Pacific Regional Office Representative, for additional information at (808) 541-1238.

SUPPLEMENTARY INFORMATION:

Background

The FAA will be conducting four meetings in Hawaii to provide the opportunity for the public to present their concerns and recommendations concerning aircraft overflight issues to officials for consideration in any future policy and regulatory action.

The majority of flights conducted by helicopter companies in Hawaii are commercial air tour/sightseeing operations. Recent complaints have spurred a plea for congressional action, through proposed legislation, that would require rulemaking by the FAA.

Issues such as air traffic congestion, aircraft noise, flight safety, and airport constraints near scenic areas are sometimes exacerbated by the growth of air tour/sightseeing activity and the associated increase in the number of flights conducted over a given area. The source of some complaints thought to be from sightseeing helicopter activity may actually come from other aviation operations such as military, police, drug interdiction or other government agency activity.

Commercial air tour and sightseeing flights are normally conducted under part 91 or part 135 of the Federal Aviation Regulations (FAR). Section 135.1(b)(2) of the FAR excepts nonstop sightseeing flights that begin and end at the same airport and are conducted within a 25-statute mile radius of that airport from the requirements of part 135. These flights are permitted to be conducted entirely under part 91 regardless of whether or not the flight is conducted for hire. Presently, operators flying only under part 91 do not hold an operating certificate, and do not have FAA reporting requirements. Part 91 sightseeing flights might include flights conducted by private individuals or small companies that provide only occasional rides in the local area of their home airport or heliport. The FAA has received recommendations that all air tour-sightseeing flights be conducted under FAR part 135 with certificated operators.

Helicopters are limited by regulation to a minimum altitude based on safety of flight that will permit, in the event of a power failure, an emergency landing without undue hazard to persons or property on the surface. Commercial helicopter flights conducted under Federal Aviation Regulation part 135 are restricted to no less than 300 feet above the surface when operating over a congested area. The Helicopter Association International (HAI) of Alexandria, Virginia founded the voluntary "fly neighborly" program. The program is widely supported by the helicopter industry to mitigate complaints about low-flying helicopters. The Hawaii Helicopter Operators Association (HHOA) operates with similar goals to fly neighborly in Hawaii. The HHOA has expanded the HAI fly neighborly concept with a structured member compliance program that includes a minimum standoff/altitude rule of 1500 feet.

The FAA has received requests for special regulations in Hawaii to include special air tour routes and marked areas where overflights of all aircraft are limited by altitude. Community groups have expressed their desire to limit the

frequency of overflights and to have no-fly time slots. The FAA has met with representatives of local citizen groups and the helicopter industry in Hawaii regarding all of these important issues and will now conduct public meetings to gather further information in the State of Hawaii.

Participation at the Meeting

Requests from persons who wish to present oral statements at the public meetings should be submitted to Melodie De Marr at the address listed in the section entitled **FOR FURTHER INFORMATION CONTACT** no later than January 21, 1994. Such requests should include a written summary of remarks to be presented and an estimate of time needed for the presentation. Requests received after the date specified above will be scheduled if there is time available during the meeting; however, the names of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers that will be available at the meeting. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested.

Meeting Procedures

The following procedures are established to facilitate the meeting:

(a) There is no admission fee or other charge to attend or to participate in the meeting.

(b) This meeting will be informal in nature and will be conducted by designated representatives of the Administrator. Each participant will be given an opportunity to deliver comments or make a presentation.

(c) Any person wishing to make a presentation at the meeting must notify the FAA prior to the meeting and provide an estimate of the time needed for the presentation. This procedure will permit allocation of an appropriate amount of time for each presenter. The FAA may allocate the time available for each presentation to accommodate all speakers. Everyone who has provided advance notice will have the opportunity to address the meeting panel. Time will also be set aside for brief, unscheduled comments. The meeting will be adjourned at any time if all persons present have had the opportunity to speak.

(d) Any person who wishes to present a position paper to the FAA, pertinent to the issues associated with aircraft overflights in the State of Hawaii, may do so. Persons wishing to distribute pertinent position papers to the attendees should present 10 copies of all materials to the panel members.

Additional copies of each handout should be available for other attendees.

(e) Materials relating to issues associated with aircraft overflights in the State of Hawaii will be accepted at the meeting. Every reasonable effort will be made to hear every request for presentation consistent with a reasonable closing time for the meeting. Persons may submit written comments by February 15, 1994, regardless of intent to attend the meetings.

(f) Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a member of the panel is not intended to be, and should not be construed, as a position of the FAA.

(g) The meeting is designed to solicit public views and more complete information on aircraft overflight issues in the State of Hawaii. Therefore, the meeting will be conducted in an informal and non-adversarial manner. No individual will be subject to cross-examination by any other participant; however, panel members may ask questions to clarify a statement and to ensure a complete and accurate record.

(Authority: 49 U.S.C. App. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2451 et. seq.; 49 U.S.C. 106(g)).

Issued in Washington, DC, on December 22, 1993.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-31755 Filed 12-28-93; 8:45 am]

BILLING CODE 4910-13-M

Intent to Rule on Application to Impose and Use and Impose Only the Revenue From a Passenger Facility Charge (PFC) at Pullman-Moscow Regional Airport, Pullman, Washington

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 impose and use the revenue from a PFC at Pullman-Moscow Regional 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 28, 1994.

ADDRESSES: Comments on this application may be mailed or delivered

in triplicate to the FAA at the following address:

J. Wade Bryant, Seattle Airports District Office, SEA-ADO, Federal Aviation Administration, 1601 Lind Avenue SW., Suite 250, Renton, WA 98055-4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David Crouner, airport Manager at the following address:

Pullman-Moscow Regional Airport, 3200 Airport Complex N., Pullman, WA 99163.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Pullman-Moscow Regional Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Vargas, (206) 227-2660; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, WA 98055-4056. 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 impose and use the revenue from a PFC at Pullman-Moscow Regional 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 December 20, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Pullman, WA and the City of Moscow, ID was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 22, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: \$3.00
Proposed charge effective date: April 1, 1994

Proposed charge expiration date: October 31, 1997

Total estimated PFC revenue: \$169,287.65

Brief description of proposed project(s): Impose and Use projects: Runway 5/23 rehabilitation, runway and taxiway signage, lighting upgrade and runway 5 safety area stabilization, master plan update, aircraft rescue and fire fighting (ARFF) vehicle acquisition and storm water pollution prevention plan development, modify ARFF

building and expand general aviation (GA) apron.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operator filing FAA form 1800-31, commuters or small certificated air carriers filing DOT Form 298-C schedule T1 or E1 and large certificated route air carriers filing RSPA Form T-100.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT" and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM-600, 1601 Lind Avenue SW, Suite 540 Renton, WA 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Pullman.

Issued in Renton, Washington on December 20, 1993.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 93-31755 Filed 12-28-93; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 93-93; Notice 1]

Century Products Company; Receipt of Petition for Determination of Inconsequential Noncompliance

Century Products Company (Century) of Macedonia, Ohio has determined that some of its child safety seats fail to comply with the flammability requirements of 49 CFR 571.213, "Child Restraint Systems," Federal Motor Vehicle Safety Standard (FMVSS) No. 213, and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Century has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S5.7 of FMVSS No. 213 states that "[e]ach material used in a

child restraint system shall conform to the requirements of S4 of FMVSS No. 302 (571.302)." Paragraph S4.3(a) of FMVSS No. 302 states that "[w]hen tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its surface, at a rate of more than 4 inches per minute." Paragraph S4.2.1 of FMVSS No. 302 states that "[a]ny material that does not adhere to other material(s) at every point of contact shall meet the requirements of S4.3 when tested separately."

During the period of December 1991 to May 1993, Century manufactured and sold 192,824 Model 4594 and 4595 child safety seats that do not comply with the flammability requirements of FMVSS No. 213. On June 7, 1993, NHTSA informed Century that, when its Model 4595 child safety seat was tested, the fabric seat cover failed to meet the Standard No. 213 flammability requirements (Century's Model 4594 has the same construction as its Model 4595, and therefore is also at issue). Calspan tested six samples of the seat covers for NHTSA, yielding burn rates of between 6.3 and 7.6 inches per minute (Agency Investigation File NCI 213-DTL-93-036).

The subject child seats are constructed of fabric, fiberfill, and backing. The covers on these seats are formed by sewing three sections together: The left side, the right side, and the center. Each section is fully sewn around its perimeter and the three sections are sewn together. The entire perimeter of the cover is then permanently and completely sewn together with an overlock to assure that the layers are securely attached. There is additional stitching surrounding the buckle opening and belt loop areas. Because of the construction of the seats, Century felt that composite testing, or testing the fabric, fiberfill, and backing together, would be the most accurate means of determining the flammability of the product.

Century supports its petition for inconsequential noncompliance with the following (Century also submitted test reports which are available for review in the NHTSA docket.):

Under the National Traffic and Motor Vehicle Safety Act (the "Act"), 15 U.S.C. § 1391 *et seq.*, each FMVSS that is promulgated is required to be practicable, and designed to "meet [] the need for motor vehicle safety." 15 U.S.C. 1391(2). The definition of "motor vehicle safety" is as follows:

"Motor vehicle safety" means the performance of motor vehicles or motor vehicle equipment in such a manner that the public is protected against *unreasonable risk*

of accidents occurring as a result of the design, construction or performance of motor vehicles and also protected against *unreasonable risk of death or injury* to persons in the event that accidents do occur, and includes nonoperational safety of such vehicles. 15 U.S.C. 1391(1) (emphasis added by Century).

Section 157 of the Act, 15 U.S.C. 1417, exempts manufacturers from the Act's notice and remedy requirements when the Secretary determines that a defect or noncompliance is inconsequential as it relates to motor vehicle safety. By enacting section 157, Congress acknowledged that there are circumstances where a manufacturer has failed to comply with a FMVSS and yet the impact on motor vehicle safety is so slight that an exemption from the notice and remedy requirements of the Act is justified. Century submits that this is one of those cases.

Under FMVSS No. 213, section S5.7, "each material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302." 49 CFR 571.213 S5.7 (1992). FMVSS No. 302 sets the standard for the flammability of materials used in the interior of motor vehicles. The purpose of FMVSS No. 302 is to "reduce the deaths and injuries to motor vehicle occupants caused by vehicle fires, especially those originating in the interior of the vehicle from sources such as matches or cigarettes."

When FMVSS No. 302 was originally proposed, materials used in the interior of motor vehicles were to be tested separately regardless of how the materials were used. FMVSS No. 302 was revised prior to its release to require testing as a composite if the surface material is "bonded, sewed or mechanically attached to the underlying material." 36 FR 290 (1971). The purpose of the revision was to eliminate "an element or complexity found unnecessary for safety purposes." Under this version of FMVSS No. 302, Century's infant restraint would have been tested as a composite and readily passed the standard.

However, in 1975, the testing procedure was again revised, and the standard now in place was adopted. 40 FR 14,318 (1975). Under the revised standard, materials are tested as a composite only if the material "adhere(s) to other material(s) at every point of contact." 49 CFR 571.302 S4.2.1. The standard was revised to take into account some omission in the testing scheme "and to reduce the complexity of testing single and composite materials." 40 FR 14,319 (1975). The standard was *not* revised because former FMVSS No. 302 was

found to be inadequate to meet the safety standards of the Act, but to reduce the complexity of the testing.

The current version of FMVSS No. 302 may go further than necessary to prevent the "unreasonable risk of injury or death." This is evidenced by the results of a study completed by Failure Analysis Associates in March 1991. A study of the U.S. CPSC NEISS database and the NHTSA Complaint File back to 1978 revealed *not one* instance in which an infant or child was injured because a car seat ignited. Failure Analysis Associated, Inc., *Flammability Tests and Examination of Accident/Injury and Complaint Data 11* (1991). A study conducted by James H. Shanley, Jr. in conjunction with Fisher-Price's petition for determination of inconsequential noncompliance also found no instances in which a vehicle fire started in a child safety seat. *Fisher-Price*, Dkt. No. 93-79, 58 FR 59,511 (1993) (Notice of Receipt of Petition for Determination of Inconsequential Noncompliance). Century realizes that the facts in their case are different from Fisher-Price and only cites the document for the purpose stated in this Petition. Moreover, in 1971 a much larger portion of our society smoked. Now, with fewer and fewer Americans smoking, the risks that an infant or child restraint could be set on fire by lighted cigarettes or matches is becoming ever more remote.

The Agency could submit that the reason there have been no fires is because of FMVSS 302 and their aggressive enforcement of the standard. But, it is important to remember that the Agency standard does not require nonflammable materials; it only requires material which burns slowly. Hence, the standard, while admirable, would not explain the fact that there has been no recorded evidence of a fire.

The frequency of incidents involving nonconforming or defective equipment is a factor in determining whether defects or noncompliance has an impact on safety. See, e.g., *United States v. General Motors Corp.*, 656 F. Supp. 1555 (D.D.C. 1987), *aff'd*, 841 F.2d 400 (D.C. Cir. 1988) (premature wheel lockup in 1980 X-cars was not a "safety related defect" when the risk of failure was no worse than, and in most instances better than, the rate for all cars); *United States v. General Motors Corp.*, 561 F.2d 923 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1033 (1978) (government presented evidence of a disproportionately high number of replacement parts (35,366) and inferred, in the absence of challenge by General Motors, that replacement part sales were due to a disproportionately high rate of failures and concluded that defect

safety-related). The fact that no child has been injured by fire caused by a child car seat for the last 15 years militates strongly against a finding that Century's noncompliance has an effect on safety.

NHTSA has recognized that some technical violations of NHTSA standards do not affect safety and [has] exempted manufacturers from the notice and remedy requirements of the Act. See, e.g., *General Motors Corp.*, Dkt. No. 92-23, 57 FR 45,866 (1992) (one test point on side reflex reflector failed to meet standard, but when values for reflector considered overall, noncompliance inconsequential). Another example, in *General Motors Corp.*, Dkt. No. 91-10-IP-No. 2, 56 FR 33,323 (1991), NHTSA found that the technical violation at issue had an inconsequential effect on safety because the potential hazards were so remote.

In *General Motors Corp.*, General Motors' high beam telltale in its 1990 Oldsmobile Toronado was not in compliance with NHTSA standards because when the cigar lighter was in use, the telltale dimmed or extinguished. The Agency granted GM's petition for inconsequential noncompliance because problems would occur only under a particular set of circumstances:

The noncompliance could only manifest itself during upper beam use when the cigar lighter was also in use. But only a comparatively small portion of driving occurs at night, the time of headlamp activation. Because of State and local laws prohibiting upper beam use, only a very small percentage of nighttime driving is performed using the upper beam. The 25-second use of the cigar lighter would comprise only a limited amount of the time the upper beam is in use. The safety hazard most likely to be created by the noncompliance is glare in the eyes of oncoming driver on a two or three-lane road, but, if discomforted, the instinctive reaction of that driver would be to flash the upper beams, alerting the noncompliant vehicle to lower that vehicle's upper beams. *The probability of all these facts occurring simultaneously is low.* [Emphasis added.] *Id.* at 33,324.

[Century asserts that] the "probability of all these facts occurring simultaneously" in this Century case is exceedingly low. When tested as a composite, Century's Model 4594 and 4595 infant restraints fall within NHTSA burning rate. The components of the infant restraint are securely sewn together. In order for Century's infant restraint to pose a hazard to a passenger, (1) the seat would have to have somehow torn apart around the numerous sewn seams; (2) the fabric would have to be frayed in such a way

that the fabric is sticking up away from the fiberfill; and (3) the source of ignition would have to land on the exposed fabric. Again, the "probability of all these facts occurring simultaneously" is low. Coupling the need for these unlikely probabilities with the fact that there has never been a fire caused by a child car seat ignition should make this a case where fairness requires a granting of the Petition.

Under the standard as enacted in 1971, Century's infant restraint would have been tested as a composite, and therefore, would be in compliance with NHTSA standards. FMVSS No. 302 was revised in 1975, not to address safety concerns, but simply for purposes of administrative ease. The fact that the requirements of FMVSS No. 302 are in excess of those needed to ensure the safety of the restraint's occupants was dramatically demonstrated by the results of a study performed by Patrick Kennedy, an expert retained by Fisher-Price. Mr. Kennedy's study revealed that typical children's clothing burns at a rate far in excess of the standard imposed by FMVSS No. 302.

Therefore, an infant sitting in Century's infant restraint is at far greater risk from the clothing he or she wears than from the infant restraint itself.

Century's infant restraints do not pose an unreasonable risk to the infants they hold. The question of whether Century's infant restraint meets the objectives of the Act could be phrased in this fashion: Would a reasonable parent, after being made aware of all the facts and circumstances surrounding this noncompliance, still be willing to place his or her infant in the Model 4594 or 4595 infant restraint? Century is satisfied that a reasonable parent would use their Model 4594 and 4595 restraints without any hesitation.

Century understands how serious the flammability issue is to the Agency and commends the Agency for its vigilance. Century is also serious about the issue, and would not consider selling a product that would place a child at risk. Century strongly believes that if there is a risk in this case, it is not an unreasonable risk as required by the Act. As Century's tests have shown, the seat pad on the infant restraint as a composite burns well within the burn rate acceptable to the Agency. Furthermore, the seat pad is constructed in a way that makes tears unlikely. Because Century's infant restraints meet the objectives of the Act, Century noncompliance is inconsequential as it relates to motor vehicle safety. For these reasons, Century respectfully requests that NHTSA grant its petition for exemption.

Interested persons are invited to submit written data, views, and arguments on the petition of Century, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the *Federal Register* pursuant to the authority indicated below.

Comment closing date: January 28, 1994.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on December 22, 1993.

Barry Felrice,

Associate Administrator for Rulemaking,

[FR Doc. 93-31797 Filed 12-28-93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986):

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: December 22, 1993.

Samuel Y. Sessions,
Deputy Assistant Secretary for Tax Policy.
[FR Doc. 93-31783 Filed 12-28-93; 8:45am]
BILLING CODE 4810-25-M

Fiscal Service

[Dept. Circ. 570, 1993 Rev., Supp. No. 6]

Surety Companies Acceptable on Federal Bonds; Western Atlantic Reinsurance Corp.

A Certificate of Authority as an acceptable reinsurer on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1993 Revision, on page 35824 to reflect this addition:

Western Atlantic Reinsurance Corporation. BUSINESS ADDRESS: 380 Madison Avenue, New York, NY, 10017. PHONE: (212) 973-5800. UNDERWRITING LIMITATION: \$9,110,000.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874-6602.

Dated: December 23, 1993.

Charles F. Schwan III,
Director, Funds Management Division,
Financial Management Service.
[FR Doc. 93-31822 Filed 12-28-93; 8:45 am]
BILLING CODE 4810-35-M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Reporting Matching Program

ACTION: Notice of matching program.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA), Veterans Health Administration (VHA), intends to conduct a recurring computer matching program matching Internal

Revenue Service (IRS) and Social Security Administration (SSA) income records with VA patient income data contained in the patient medical record. The goal of these matches is to compare income, social security number, and employment status as reported to VHA with income records maintained by IRA and SSA. For the information of all concerned, a summary report of the VHA matching program, describing the computer matches follows. In accordance with 5 U.S.C. 552a(o)(2), copies of the matching agreements are being sent to both houses of Congress. These matches are expected to commence not sooner than 40 days after agreements by the parties are submitted to Congress and the Office of Management and Budget and not sooner than 30 days from the date of publication of this notice, or 40 days from the date this notice was approved, whichever is later. The matches may be extended by the involved Data Integrity Boards for a twelve month period provided all agencies involved certify to the Data Integrity Boards, within three months of the termination date of the original match, that the matching programs will be conducted without change and the matching programs have been conducted in compliance with the original matching agreements. The matches will not continue past the date the legislative authority to obtain this information expires.

ADDRESSES: Interested individuals may comment on the matches by writing to the Director, Administration Services Office (161), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT:

Celia Winter (202) 535-7437, Program Analyst, Medical Administration Services.

SUPPLEMENTARY INFORMATION: Further information regarding the matching program is provided below. This information is required by Title 5 U.S.C. 552a(e)(12), the Privacy Act of 1974, as amended. A copy of this notice has been provided to both houses of Congress and the Office of Management and Budget.

Approved: December 13, 1993.

Jesse Brown,
Secretary of Veterans Affairs.

Report of Matching Program

Department of Veterans Affairs Patient Medical Records with Income Records Maintained by the Internal Revenue Service and the Social Security Administration

a. **Authority:** Title 38 U.S.C. 5106 and 5317; Pub. L. 101-508 as amended by Pub. L. 102-568.

b. Program Description:

(1) **Purpose:** (a) The Department of Veterans Affairs (VA), Veterans Health Administration (VHA) plans to match the household income information contained in the medical records of certain nonservice-connected veterans, with the income records for those persons maintained by the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Those nonservice-connected veterans subject to income verification matching are those veterans who are receiving VA medical care in a mandatory eligibility category due to a finding of low-income subsequent to means testing.

(b) Currently, information about a veterans household income (i.e., veteran and spouses receipt of wage, self-employment and other income as well as employment status, health insurance coverage and number of dependents) is obtained when the veteran makes application for medical care at a VA medical care facility. The household income and dependent data is evaluated in a "means test" which takes into account deductions of certain income not counted as such for Veterans Health Administration eligibility purposes. Once a net income for the veteran is established, it is applied against means test thresholds, or levels of income establishing mandatory or discretionary eligibility for medical care. If the veterans' net income falls below the applicable means test threshold, he or she is eligible for mandatory care (i.e., no-cost care); however, if the net income falls over the applicable threshold, the veteran is given a discretionary eligibility. Veterans who are eligible for discretionary care are provided care if the VA medical facility has the resources to treat discretionary veterans, and if the veteran agrees to make a co-payment for such care. The proposed matching programs will enable VA to verify the accuracy of reported income and employment status and therefore more accurately determine eligibility for medical care.

(2) **Procedures:** VA's Veterans Health Administration has established an

Income Verification Match (IVM) Center. The IVM Center will electronically extract demographic and income data from each VA medical care facility's database on nonservice-connected veterans found eligible for mandatory care based solely on low income. The VHA IVM extract file will be matched against IRS and SSA income records. If a VHA record and SSA or IRS record match on social security number and name, the IVM Center will begin an extensive case development and verification process. This process will assure the validity of the matched cases by verifying the IRS/SSA reported income amount with the payer(s) and recipients of the income. Each veteran and/or spouse identified by the match will be contacted in order to notify the veteran and/or spouse of the income discrepancy identified by the match, to verify the discrepancy, and to advise him or her of potential changes to the veterans' medical care eligibility at the VA medical center, and the potential

billing action for co-payments. Before any adverse action is taken, the individual(s) identify by the match will be given the opportunity to contest the findings. Where there are reasonable grounds to believe that there has been a violation of criminal laws, the matter will be referred for prosecutive consideration in accordance with existing VA policies.

c. Records to be Matched. The VA records involved in the match are patient medical records maintained in the "Patient Medical Record—VA (24VA136)" contained in the Privacy Act Issuances, 1991 Compilation, Volume II, and amended at 57 FR 28003, June 23, 1992; 57 FR 45419; October 1, 1992; 58 FR 29853, May 24, 1993, and 58 FR 40852, July 30, 1993. The IRS records are from the Wage and Information Returns (IRP) Master File, Privacy Act System Treas/IRS 22.061. The SSA records are from the Earnings Recording and Self-Employment Income System, HHS/SSA/OSR 09-60-0059.

d. Period of Match. The initial data exchanges are expected to begin 40 days after the matching agreements are signed by the Data Integrity Boards (DIB's) and Congressional Offices and OMB have been notified, and 30 days from the date of publication of notice in the **Federal Register** or 40 days from the date this notice is approved, whichever is later. These matches may be extended by the involved DIB's for a twelve month period provided the agencies participating in the match certify to the Data Integrity Boards, within three months of the termination date of the original match, that the matching programs will be conducted without change and the matching programs have been conducted in compliance with the original matching agreements. The matches will not continue past the date of legislative authority to obtain this information expires.

[FR Doc. 93-31202 Filed 12-28-93; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 248

Wednesday December 29, 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 FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 11:00 a.m., January 3, 1994.

PLACE: 1001 Pennsylvania Avenue, NW., suite 500, Great Lakes Room, Washington, DC 20004.

CLOSED MEETING: The members of the Board for International Broadcasting

will meet in closed session to discuss potential measures for achieving budget reductions consistent with the broad foreign policy objectives of the United States. The meeting will be closed pursuant to 5 U.S.C. 552b(c)(1), (2), and (9)(B), and 22 CFR 1302.4 (a), (b), and (h), because premature disclosure of the information discussed would be likely to significantly frustrate implementation of a proposed agency action, including but not limited to negotiations abroad. The closed meeting will be followed by a closed meeting of the Board of

Directors of RFE/RL, Inc., a nonprofit private corporation.

CONTACT PERSON FOR MORE INFORMATION: Patricia Sowick, Program Officer, Board for International Broadcasting, suite 400, 1201 Connecticut Avenue, NW., Washington, DC 20036.

Dated: December 27, 1993

Richard W. McBride,

Executive Director

[FR Doc. 93-32005 Filed 12-27-93; 3:46 pm]

BILLING CODE 6155-01-M

Federal Register

Wednesday
December 29, 1993

Part II

Department of Health and Human Services

Public Health Service; Office of the Assistant Secretary for Health; Agency for Health Care Policy and Research; Substance Abuse and Mental Health Services Administration; National Institute of Health; Centers for Disease Control; Agency for Toxic Substances and Disease Registry; Health Resources and Services Administration; and Food and Drug Administration

Privacy Act of 1974; Annual Publication of Systems of Records

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Public Health Service****Office of the Assistant Secretary for Health; Privacy Act of 1974; Annual Publication of Systems of Records Notices**

AGENCY: Public Health Service, HHS.

ACTION: Publication of minor changes to systems of records notices.

SUMMARY: In accordance with Office of Management and Budget Circular No. A-130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Office of the Assistant Secretary for Health (OASH) in the Public Health Service (PHS) has reviewed its system notices and determined that there are no changes.

SUPPLEMENTARY INFORMATION: OASH has completed the annual review of its systems of records. Since the publication of December 31, 1992, OASH has made no changes to its inventory of systems of records that affect the public's right or need to know. A Table of Contents of active systems of records is published below. The complete text of the system notices was last published in the Office of the Federal Register's 1991 biennial Compilation of Privacy Act Issuances.

Dated: November 12, 1993.

Wilford J. Forbush,

Director, Office of Management.

Table of Contents

- 09-37-0001 Office of the Assistant Secretary for Health Correspondence Control System, HHS/OASH/OM.
- 09-37-0002 PHS Commissioned Corps Personnel Records, HHS/OASH/OSG.
- 09-37-0003 PHS Commissioned Corps Medical Records, HHS/OASH/OSG.
- 09-37-0005 PHS Commissioned Corps Board Proceedings, HHS/OASH/OSG.
- 09-37-0006 PHS Commissioned Corps Grievance, Investigatory, and Disciplinary Files, HHS/OASH/OSG.
- 09-37-0008 PHS Commissioned Corps Unofficial Personnel Files and Other Station Files, HHS/OASH/OSG.
- 09-37-0017 Proceedings of the Board for Correction of Public Health Service Commissioned Corps Records, HHS/OASH/OM.
- 09-37-0020 Office of Minority Health Grants Records System, HHS/OASH/OMH
- 09-37-0022 Records of Health Experts Maintained by the Office of International Health, HHS/OASH/OIH.

[FR Doc. 93-28371 Filed 12-28-93; 8:45 am]

BILLING CODE 4180-17-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Agency for Health Care Policy and Research****Privacy Act of 1974; Annual Publication of Systems of Records**

AGENCY: Department of Health and Human Services (HHS); Public Health Service (PHS); Agency for Health Care Policy and Research (AHCPR).

ACTION: Annual Publication of Revisions to PHS Privacy Act System Notices.

SUMMARY: The Agency for Health Care Policy and Research (AHCPR) is publishing this notice in accordance with Office of Management and Budget Circular No. A-130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," which requires that agencies review each system of records annually and publish any minor changes in the **Federal Register**.

The AHCPR has completed the annual review of its systems of records and is publishing below (1) a table of contents which lists all active systems of records in AHCPR, and (2) those minor changes which an individual needs to know to obtain access to his or her records, such as changes in the system location of records or the address of system managers.

Dated: November 1, 1993.

J. Jarrett Clinton,
Administrator.

Table of Contents

- 09-35-0001 Agency for Health Care Policy and Research, Grants Information and Tracking System with Contracts Component (GIAN-T), HHS/AHCPR/OM.
- 09-35-0002 National Medical Expenditure Survey, HHS/AHCPR/CGHSIR.
- 09-35-0003 AIDS Cost and Services Utilization Survey (ACSUS), HHS/AHCPR/CGHSER.
- 09-35-0004 Medical Treatment Effectiveness Program (MEDTEP), HHS/AHCPR.

09-35-0002**SYSTEM NAME:**

National Medical Expenditure Survey, HHS/AHCPR/CGHSIR.

Minor changes have been made to this system notice. The following categories are hereby revised:

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals and members of households selected by probability sampling techniques to be representative of the civilian noninstitutionalized population of the

United States; health care providers, staff responding on behalf of health insurers and the employers of members of sampled households; (2) residents and next-of-kin of such residents of nursing and personal care homes, selected by probability sampling techniques to be representative of residents of such homes, and facilities and the staff responding on behalf of such facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing information on: (1) The incidence of illness and accidental injuries, prevalence of diseases and impairments, the extent of disability, the use, expenditures and sources of payment for health care services, and other characteristics of individuals obtained in household interviews (demographic and socioeconomic characteristics such as age, marital status, education, occupation and family income) and the names, telephone numbers and addresses of the responding staffs of health care providers, health insurers, and employers; (2) the utilization of long-term care, nursing home care, care in personal care homes through data on residents (demographic and social characteristics, health status and charges and sources of payment for care); through data facility characteristics (general characteristics, certification, services offered and corresponding expenses), and through data on next-of-kin or representatives of residents (demographic and social characteristics, health status, and expenditures for health care of residents); and (3) Medicare claims records of members of sampled households and of sampled residents of nursing and personal care homes.

RECORD SOURCE CATEGORIES:

Respondents in the survey samples including: Members of households, physicians, hospitals, health insurers, employers, staff of nursing and personal care homes, the next-of-kin of residents of such homes and facilities, and Systems 09-70-0005, Medicare Bill File (Statistics), HHS/HCFA/BDMS.

09-35-0003**SYSTEM NAME:**

AIDS Cost and Services Utilization Survey (ACSUS), HHS/AHCPR/CGHSER.

Minor changes have been made to this system notice. The following category is hereby revised:

SYSTEM MANAGER AND ADDRESS:

Director, Division of Cost and Financing, Center for General Health

Services Extramural Research, Agency for Health Care Policy and Research, Executive Office Center, Suite 502, 2101 East Jefferson Street, Rockville, Maryland 20852-4908

09-35-0004

SYSTEM NAME:

Agency for Health Care Policy and Research, Medical Treatment Effectiveness Program (MEDTEP), HHS/AHCPR.

Minor changes have been made to this system notice. The following categories are hereby revised.

SYSTEM LOCATION:

Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, Suite 310, 6000 Executive Boulevard, Rockville, Maryland 20852-3883, (301) 594-4015

Bureau of Data Management and Strategy, Office of Computer Operations, The Health Care Financing Administration, 6325 Security Boulevard, Baltimore Maryland 21218

Division of Computer Research and Technology (DCRT), National Institutes of Health, Building 12A, Room 4037, 9000 Rockville Pike, Bethesda, Maryland 20892

Parklawn Computer Center (PCC), Public Health Service, Parklawn Computer Center, Rockville, Maryland 20857

Inactive records will be stored at: Washington National Records Center, Room 125, 4205 Suitland Road, Suitland, Maryland 20409

A current list of contractor sites is available by writing to the System Manager at the address below: Director, Cost Analysis and Evaluation Unit, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, Suite 310, 6000 Executive Boulevard, Rockville, Maryland 20852-3883, (301) 594-4015

SAFEGUARDS:

1. *Authorized users:* These records will be maintained on the Health Care Financing Administration's (HCFA) computer in Baltimore, MD, National Institutes of Health's (NIH)—DCRT mainframe computer in Bethesda, MD, at the Parklawn Computer Center (PCC) in Rockville, MD, or on AHCPR contractor computers, and access is by password known only to authorized users who are AHCPR staff or contractors or their employees responsible for the conduct of authorized research.

2. *Physical safeguards:* Access to computer systems where data are stored electronically is restricted to individuals with special identification codes and accounts. The data set names are known only to those individuals with a need to know for authorized research. Inactive records in hard copy or on magnetic media are stored at the Federal Records Storage Facility with Records Management approval and with the safeguards and security provided by the facility. Rooms where records are stored are double locked when not in use. During regular business hours rooms are unlocked but access is controlled by on-site personnel.

3. *Procedural and technical safeguards:* Approval for access and use of the HCFA, NIH, PCC and contractors mainframe computers is required prior to issuing a user ID and account. A password is required to access the terminal and a data set name controls the release of data only to authorized users. All users of confidential information in connection with the performance of their research (see Authorized Users, above) protect information from public view and from unauthorized personnel entering an unsupervised office. Records maintained at the Federal Records Storage Facility cannot be released without proper procedure and only to authorized individuals in AHCPR. AHCPR staff monitors contractor compliance with the provisions of the Privacy Act, as well as compliance with the confidentiality protection in 42 U.S.C. 299a-1(c). Contractor system security must be commensurate with the use and sensitivity of the records.

RETENTION AND DISPOSAL:

After completion of the proposed studies, AHCPR staff and contractors will retire hard copy records and/or records on magnetic media to a Federal Records Center. Contractors will delete all records from their computer systems upon completion of the specified studies and retain no copies of any of these records. Records may be retired to a Federal Records Center and subsequently disposed of in accordance with the AHCPR Records Control Schedule. The records control schedule and disposal standard for these records may be obtained by writing to the system manager at the address below.

Policy-Coordinating Official:

Director, Cost Analysis and Evaluation Unit, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, Suite 310,

6000 Executive Boulevard, Rockville, Maryland 20852-3883, (301) 594-4015.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Cost Analysis and Evaluation Unit, Center for Medical Effectiveness Research, Agency for Health Care Policy and Research, Executive Office Center, 2101 East Jefferson Street, Suite 605, Rockville, Maryland 20852-4908, (301) 594-1485

Project Officer, Pediatric Gastroenteritis Research, Center for Medical Effectiveness Research, Agency for Health Care Policy and Research, Executive Office Center, 2101 East Jefferson Street, Suite 605, Rockville, Maryland 20852-4908, (301) 594-1485

Project Officer, C-Section Research, Center for Medical Effectiveness Research, Agency for Health Care Policy and Research, Executive Office Center, 2101 East Jefferson Street, Suite 605, Rockville, Maryland 20852-4908, (301) 594-1485

Project Officer, Schizophrenia Research, Center for Medical Effectiveness Research, Agency for Health Care Policy and Research, Executive Office Center, 2101 East Jefferson Street, Suite 605, Rockville, Maryland 20852-4908, (301) 594-1485

Project Officer, Low Birth Weight Research, Center for Medical Effectiveness Research, Agency for Health Care Policy and Research, Executive Office Center, 2101 East Jefferson Street, Suite 605, Rockville, Maryland 20852-4908, (301) 594-1485

Project Officer, Stroke Research, Center for Medical Effectiveness Research, Agency for Health Care Policy and Research, Executive Office Center, 2101 East Jefferson Street, Suite 605, Rockville, Maryland 20852-4908, (301) 594-1485

[FR Doc. 93-27737 Filed 12-28-93; 8:45 am]

BILLING CODE 4160-90-P

Public Health Service

Substance Abuse and Mental Health Services Administration Privacy Act of 1974; Annual Publication of Revisions to Systems Notices

AGENCY: Public Health Service, DHHS.

ACTION: Privacy Act: Annual Publication of Revisions to System Notices.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) is publishing this notice in accordance with the Office of Management and Budget Circular No. A-130, Appendix I, "Federal Agency

Responsibilities for Maintaining Records about Individuals," which requires that agencies review each system of records annually and publish any minor changes in the **Federal Register**. SAMHSA is publishing (1) a table of contents which lists all active systems of records in SAMHSA, and (2) those minor changes, such as systems names, legislative authorities, system locations, and addresses of system managers, that improve clarity and are a result of the reorganization of the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA).

SUPPLEMENTARY INFORMATION: On October 1, 1992, ADAMHA was reorganized into SAMHSA as mandated by the ADAMHA Reorganization Act of 1992, Pub. L. 102-321. As required by law, SAMHSA consists of the Office of the Administrator and three Centers, which administer the prevention and treatment services programs formerly in ADAMHA—the Center for Substance Abuse Prevention, the Center for Substance Abuse Treatment, and the Center for Mental Health Services. The research Institutes formerly at ADAMHA—the National Institute of Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health—became components of the National Institutes of Health.

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- 09-30-0023—Records of Contracts Awarded to Individuals, HHS/SAMHSA/OA; published **Federal Register**, Vol. 49, No. 106, p. 22713.
- 09-30-0027—Grants and Cooperative Agreements: ADM Services Evaluation, Training, Service, Education, Demonstration, Fellowship, Clinical Training, Community Services, HHS/SAMHSA/OA; published **Federal Register**, Vol. 49, No. 106, p. 22714.
- 09-30-0029—Records of Guest Workers, HHS/SAMHSA/OA; published **Federal Register**, Vol. 48, No. 230, p. 53823.
- 09-30-0033—Correspondence Files, HHS/SAMHSA/OA; published **Federal Register**, Vol. 48, No. 230, p. 53825.
- 09-30-0036—Alcohol, Drug Abuse, and Mental Health Epidemiologic Data HHS/SAMHSA/OA; published **Federal Register**, Vol. 49, No. 206, p. 42639.
- 09-30-0047—Patient Records on Chronic Mentally Ill Merchant Seamen Treated at Nursing Homes in Lexington, Kentucky, (1942 to Present), HHS/SAMHSA/CMHS, published **Federal Register**, Vol. 51, No. 226, p. 42395.
- 09-30-0049—Consultant Records Maintained by ADAMHA Contractors, HHS/SAMHSA/OA; published **Federal Register**, Vol. 52, No. 195, p. 37660.

09-30-0023—

SYSTEM NAME:

Records of Contracts Awarded to Individuals, HHS/SAMHSA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Substance Abuse and Mental Health Services Administration, Office of the Administrator, Office of Management, Planning, and Communications, SAMHSA Contracts Office, Room 13C-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

An individual who receives a contract as well as individuals who apply or compete for an award but do not receive the award and their consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Curriculum vitae, salary information, evaluations of proposals by contract review committees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

SAMHSA: Public Health Service Act, sections 301 (42 U.S.C. 241), 322 (42 U.S.C. 249(c)), and 501-05 (42 U.S.C. 290aa et seq.). CSAT: Center for Substance Abuse Treatment, section 507-12 (42 U.S.C. 290bb et seq.). CSAP: Center for Substance Abuse Prevention, section 515-8 (42 U.S.C. 290bb-21 et seq.). CMHS: Center for Mental Health Services, sections 506 (42 U.S.C. 290aa-5) and 520-35 (42 U.S.C. 290bb-31 et seq.). Protection and Advocacy for Individuals with Mental Illness Act of 1986 as amended (42 U.S.C. 10801 et seq.); Refugee Education Assistance Act of 1980, section 501(c) (8 U.S.C. 1522 note), Pub. L. 96-422; Executive Order 12341; and Disaster Relief Act of 1974, section 413, Pub. L. 93-288, as amended by section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100-107.

PURPOSE(S):

To document the history of each contract procurement action and award made within SAMHSA to an individual. The records are also used by contract review committee members when evaluating a proposal submitted by an individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office

made at the written request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. A record from this system may be disclosed to the following entities in order to help collect a debt owed the United States:

(a) To another Federal agency so that agency can effect a salary offset;

(b) To another Federal agency so that agency can effect an administrative offset under common law or under 31 U.S.C. 3716 (withholding from money payable to, or held on behalf of, the individual);

(c) To the Treasury Department to request his/her mailing address under I.R.C. 6103(m)(2) in order to locate him/her or in order to have a credit report prepared;

(d) To agents of the Department and to other third parties to help locate him/her in order to help collect or compromise a debt;

(e) To debt collection agents under 31 U.S.C. 3718 or under common law to help collect a debt; and

(f) To the Justice Department for litigation or further administrative action.

Disclosure under part (d) of this routine use is limited to the individual's name, address, Social Security number, and other information necessary to identify him/her. Disclosure under parts (a)-(c) and (e) is limited to those items; the amount, status, and history of the claim; and the agency or program under which the claim arose. An address obtained from IRS may be disclosed to a credit reporting agency under part (d) only for purposes of preparing a commercial credit report on the

individual. Part (a) applies to claims or debts arising or payable under the Social Security Act if and only if the employee consents in writing to the offset.

4. SAMHSA may disclose information from its records in this system to consumer reporting agencies in order to obtain credit reports to verify credit worthiness of contract applicants. Permissible disclosures include name, address, Social Security number or other information necessary to identify the individual; the funding being sought; and the program for which the information is being obtained.

5. When a debt becomes partly or wholly uncollectible, either because the time period for collection under the statute of limitations has expired or because the Government agrees with the individual to forgive or compromise the debt, a record from this system of records may be disclosed to the Internal Revenue Service to report the written-off amount as taxable income to the individual.

6. A record from this system may be disclosed to another Federal agency that has asked the Department to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States.

Disclosure under this routine use is limited to: name, address, Social Security number, and other information necessary to identify the individual, information about the money payable to or held for the individual, and other information concerning the administrative offset.

7. SAMHSA may disclose from this system of records to the Department of Treasury, Internal Revenue Service (IRS): (1) A delinquent debtor's name, address, Social Security number, and other information necessary to identify the debtor; (2) the amount of the debt; and (3) the program under which the debt arose, so that IRS can offset against the debt any income tax refunds which may be due to the debtor.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681 (F)) or the Federal Claims Collection Act of 1966, (31 U.S.C. 3701(a)(3)). The purpose of such disclosures is to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records. Information disclosed will be limited to name, Social Security number, address, other information necessary to establish the identity of the

individual, and amount, status, and history of the claim, and the agency or program under which the claim arose. Such disclosures will be made only after the procedural requirements of 31 U.S.C. 3711(f) have been met.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Documents filed in folders in enclosed and/or locked file cabinets.

Retrievability: By contract number and cross indexed by individual's name.

SAFEGUARDS:

1. *Authorized users:* Federal contract and support personnel, Federal contract review staff and outside consultants acting as peer reviewers of the project.

2. *Physical safeguards:* All folders are in file cabinets in a room that is locked after business hours in a building with controlled entry (picture identification). Files are withdrawn from cabinet for Federal staff who have a need to know by a sign in and out procedure.

3. *Procedural safeguards:* Access to records is strictly limited to those staff members trained in accordance with the Privacy Act.

4. *Implementation guidelines:* DHHS Chapter 45-13 and supplementary Chapter PHS hf: 45-13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Records are retired to a Federal Records Center and subsequently disposed of in accordance with the SAMHSA Records Control Schedule. The records control schedule and disposal standard for these records may be obtained by writing the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

SAMHSA Contracts Officer, Substance Abuse and Mental Health Services Administration, Office of the Administrator, Office of Management, Planning, and Communications, Room 13C-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate System Manager at the address above. An individual may learn if a record exists about himself/herself upon written request with notarized signature. The request should include, if known, contractor's name, contract number, and approximate date contract was awarded. An individual may also request accounting of disclosures that have been made of his/her record, if any.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above and reasonably identify the record, specify the information being contested, the corrective action sought, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Contract proposals and supporting contract documents, contract review committees, site visitors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0027

SYSTEM NAME:

Grants and Cooperative Agreements, ADM Services Evaluation, Training, Service, Education, Demonstration, Prevention, Fellowships, Clinical Training, Community Programs, HHS/SAMHSA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Substance Abuse and Mental Health Services Administration, Office of the Administrator, Office of Management, Planning, and Communications, SAMHSA Grants Management Office, Room 13C-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principal investigators, program directors, trainees, fellows, and other employees of applicant or grantee institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grant and cooperative agreement applications and review history, including curriculum vitae, salary information, summary of review committee deliberations and supporting documents, progress reports, financial records, and payback records of clinical training awardees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

SAMHSA: Public Health Service Act, sections 301 (42 U.S.C. 241), 303 (42 U.S.C. 242(a)), 322 (42 U.S.C. 249(c)),

501 (42 U.S.C. 290aa), 503 (42 U.S.C. 290aa-2), and 505 (42 U.S.C. 290aa-4). CSAT: Center for Substance Abuse Treatment, section 507-12 (42 U.S.C. 290bb et. seq.). CSAP: Center for Substance Abuse Prevention, section 515-18 (42 U.S.C. 290bb-21 et. seq.). CHMS: Center for Mental Health Services, sections 506 (42 U.S.C. 290aa-5) and 520-35 (42 U.S.C. 290bb-31 et. seq.). Protection and Advocacy for Individuals with Mental Illness Act of 1986 as amended (42 U.S.C. 10801 et. seq.); Refugee Education Assistance Act of 1980, section 501(c) (8 U.S.C. 1522 note), Pub. L. 96-422; Executive Order 12341; and Disaster Relief Act of 1974, section 413, Pub. L. 93-288, as amended by section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100-107.

PURPOSE(S):

Records are maintained as official documentation relevant to the review, award, and administration of grant programs. Specifically, records are: 1. Used by staff program and management specialists for purpose of awarding and monitoring grant funds; 2. used to maintain communication with former trainees/fellows who have incurred an obligation for clinical training, Public Health Service Act, section 303 (42 U.S.C. 242a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to qualified experts not within the definition of Department employees for opinion during the application review process.

2. Disclosure may be made to SAMHSA contractors for the purpose of providing services related to the grant review or for carrying out quality assessment, program evaluation, and management reviews. Contractors are required to maintain Privacy Act safeguards with respect to the records.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal (e.g., the Department of Justice) or State (e.g., the State's Attorney's Office), charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the

statute, or rule, regulation or order issued pursuant thereto for litigation.

4. Disclosure may be made to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

5. Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

6. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

7. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

8. A record from this system may be disclosed to the following entities in order to help collect a debt owed the United States:

(a) To another Federal agency so that agency can effect a salary offset;

(b) To another Federal agency so that agency can effect an administrative offset under common law or under 31 U.S.C. 3716 (withholding from money payable to, or held on behalf of, the individual);

(c) To the Treasury Department to request his/her mailing address under

I.R.C. 6103(m)(2) in order to locate him/her or in order to have a credit report prepared;

(d) To agents of the Department and to other third parties to help locate him/her in order to help collect or compromise a debt;

(e) To debt collection agents under 31 U.S.C. 3718 or under common law to help collect a debt; and

(f) To the Justice Department for litigation or further administrative action.

Disclosure under part (d) of this routine use is limited to the individual's name, address, social security number and other information necessary to identify him/her. Disclosure under parts (a)-(c) and (e) is limited to those items; the amount, status, and history of the claim; and the agency or program under which the claim arose. An address obtained from IRS may be disclosed to a credit reporting agency under part (d) only for purposes of preparing a commercial credit report on the individual. Part (a) applies to claims or debts arising or payable under the Social Security Act if and only if the employee consents in writing to the offset.

9. SAMHSA may disclose information from its records in this system to consumer reporting agencies in order to obtain credit reports to verify credit worthiness of grant/cooperative agreement applicants. Permissible disclosures include name, address Social Security number or other information necessary to identify the individual; the funding being sought; and the program for which the information is being obtained.

10. When a debt becomes partly or wholly uncollectible, either because the time period for collection under the statute of limitations has expired or because the Government agrees with the individual to forgive or compromise the debt, a record from this system of records may be disclosed to the internal revenue service to report the written-off amount as taxable income to the individual.

11. A record from this system may be disclosed to another Federal agency that has asked the Department to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States.

Disclosure under this routine use is limited to: name, address, Social Security number, and other information necessary to identify the individual, information about the money payable to or held for the individual, and other information concerning the administrative offset.

12. SAMHSA may disclose from this system of records to the Department of Treasury, Internal Revenue Service (IRS): (1) A delinquent debtor's name, address, Social Security number, and other information necessary to identify the debtor; (2) the amount of the debt; and (3) the program under which the debt arose, so that IRS can offset against the debt any income tax refunds which may be due to the debtor.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of such disclosures is to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records. Information disclosed will be limited to name, Social Security number, address, other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose. Such disclosures will be made only after the procedural requirements of 31 U.S.C. 3711(f) have been met.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Noncomputerized documents are filed in folders in enclosed file cabinets and open shelves. Information on 3x5 cards in file cabinets. Computerized records exist in tape and disk form.

RETRIEVABILITY:

By grant numbers and cross-indexed by name.

SAFEGUARDS:

1. *Authorized users:* Access is limited to the SAMHSA Grants Management Officer and staff authorized by him/her: Grants specialists, grants technicians, program officials, assigned computer personnel, and possibly contractor staff including the project director and research associates.

2. *Physical safeguards:* Records are maintained in a secured area. During normal work hours, area is staffed by authorized personnel who must show identification for entry. At other times, the computer area is locked. Hard copy files are stored in rooms which are locked at night. A 24-hour security guard patrols building.

3. *Procedural safeguards:* Computer records are password protected;

passwords are changed periodically. Contractors working on computerized records are given passwords to access data only on a need-to-know basis.

4. *Implementation guidelines:* DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual and Part 6, "ADP System Security" of the ADP Systems Security Manual.

RETENTION AND DISPOSAL:

Records are retired to a Federal Records Center 2 years after termination of support and the completion of final audit.

SYSTEM MANAGER(S) AND ADDRESS:

SAMHSA Grants Management Officer, Substance Abuse and Mental Health Services Administration, Office of the Administrator, Office of Management, Planning, and Communications, Room 13C-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate System Manager at the above address. Verifiable proof of identity is required.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought, and should provide the official grant number when possible. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the appropriate System Manager at the address specified above and reasonably identify the record, specify the information being contested, the corrective action sought, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Applicants, grantees, fellows, trainees, personnel at grantee institution on whom the record is maintained, Federal advisory committees, site visitors, consultants, references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0029

SYSTEM NAME:

Record of Guest Workers, HHS/SAMHSA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Substance Abuse and Mental Health Services Administration, Division of Personnel Management, Room 15C-21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals using SAMHSA facilities who are not employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information including name, address, date and place of birth, education, employment, purpose for which SAMHSA facilities are desired, outside sponsor and SAMHSA sponsor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, section 301 (42 U.S.C. 241).

PURPOSE(S):

To document individual's presence at SAMHSA and as a record that the individual is not performing services for SAMHSA and is therefore not an employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to the U.S. Office of Personnel Management for program evaluation purposes.

2. Disclosure may be made to institutions providing financial support for subject individual.

3. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

4. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is

compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

1. *Authorized users:* Authorized employees of the Division of Personnel Management and SAMHSA managers and supervisors with legitimate interest in guest workers.

2. *Physical safeguards:* Records are stored in locked rooms.

3. *Procedural safeguards:* Authorized individuals have been trained in accordance with the Privacy Act.

4. *Implementation guidelines:* DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Retained for 2 years after completion of visit, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Personnel Management, Substance Abuse and Mental Health Services Administration, Office of the Administrator, Office of Management, Planning, and Communications, Room 15C-21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact the System Manager at the address above. Individuals who request notification in person must supply one proof of identity containing individual's complete name and one other identifier with picture (e.g., driver's license, building pass). Individuals who request notification by mail must supply notarized signature as proof of identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information to be contested, and state the corrective action sought, with supporting information to show how the record is

inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Subject individual and SAMHSA sponsor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0033

SYSTEM NAME:

Correspondence Files. HHS/SAMHSA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Substance Abuse and Mental Health Services Administration, Office of the Administrator, Executive Secretariat, Room 12C-12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Center for Substance Abuse Prevention, Office of the Director, Room 9D10, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857

Center for Substance Abuse Treatment, Office of the Director, Room 10-75, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857

Center for Mental Health Services, Office of the Director, Room 15-105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request information on SAMHSA programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

SAMHSA: Public Health Service Act, sections 301 (42 U.S.C. 241), 322 (42 U.S.C. 249(c)), and 501-05 (42 U.S.C. 290aa et seq.). CSAT: Center for Substance Abuse Treatment, section 507-12 (42 U.S.C. 290bb et seq.). CSAP: Center for Substance Abuse Prevention, section 515-8 (42 U.S.C. 290bb-21 et seq.). CMHS: Center for Mental Health Services, sections 506 (42 U.S.C. 290aa-5) and 520-35 (42 U.S.C. 290bb-31 et seq.). Protection and Advocacy for Individuals with Mental Illness Act of 1986 as amended (42 U.S.C. 10801 et seq.); Refugee Education Assistance Act of 1980, section 501(c) (8 U.S.C. 1522 note), Pub. L. 96-422; Executive Order 12341; and Disaster Relief Act of 1974, section 413, Pub. L. 93-288, as amended by section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100-107.

PURPOSE(S)

To provide reference retrieval and control to assure timely and appropriate attention.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Correspondence records maintained in hard copy; control records maintained on computer printout, tape, and disk.

RETRIEVABILITY:

Hard copy records indexed alphabetically by name and date of outgoing correspondence, by subject, and/or by computerized numerical code. Records are cross-referenced in detail on computer.

SAFEGUARDS:

1. *Authorized users:* Authorized correspondence control staff in each location and managers and supervisors on a need-to-know basis.

2. *Physical safeguards:* Records are maintained in file cabinets in a locked, secure location; computer system records are secured through the use of passwords which are changed frequently.

3. *Procedural safeguards:* Only authorized personnel have access to files and passwords.

4. *Implementation guidelines:* DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual and Part 6, "ADP System Security" in the HHS ADP Systems Security Manual.

RETENTION AND DISPOSAL:

Records are retired to the Federal Records Center after 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Same as location.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the applicable System Manager at the address above. Give name and approximate date of records requested. Individuals who request notification in person must supply one proof of identity containing individual's complete name and one other identifier with picture (e.g., driver's license, building pass). Individuals who request notification by mail must supply notarized signature as proof of identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the appropriate official at the address specified under Notification Procedures above and reasonably identify the record. Specify the information to be contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Records are derived from incoming and outgoing correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0036

SYSTEM NAME:

Alcohol, Drug Abuse, and Mental Health Epidemiologic Data, HHS/SAMHSA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located at facilities which collect or provide service evaluations

for this system under contract to the agency. Contractors may include, but are not limited to, research centers, clinics, hospitals, universities, research foundations, national associations, and coordinating centers. Records may also be located at the Office of Applied Studies, Center for Substance Abuse Prevention, the Center for Substance Abuse Treatment, and the Center for Mental Health Services. A current list of sites is available by writing to the appropriate System Manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the subjects of epidemiologic, methodologic, services evaluations, and longitudinal studies and surveys of mental health and alcohol and drug use/abuse. These individuals are selected as representative of the general adult and/or child population or of special groups. Special groups include, but are not limited to, normal individuals serving as controls; clients referred for or receiving medical, mental health, and alcohol and/or drug abuse related treatment and prevention services; providers of services; demographic subgroups as applicable, such as age, sex, ethnicity, race, occupation, geographic location; and groups exposed to hypothesized risks, such as relatives of individuals who have experienced mental health and/or alcohol, and/or drug abuse disorders, life stresses, or have previous history of mental, alcohol, and/or drug abuse related illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains data about the individual as relevant to a particular study. Examples include, but are not limited to, items about the health/mental health and/or alcohol or drug consumption patterns of the individual; demographic data; social security numbers (voluntary); past and present life experiences; personality characteristics; social functioning; utilization of health/mental health, alcohol, and/or drug abuse services; family history; physiological measures; and characteristics and activities of health/mental health; alcohol abuse, and/or drug abuse care providers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

SAMHSA: Public Health Service Act, sections 301 (42 U.S.C. 241), 322 (42 U.S.C. 249(c)), 501 (42 U.S.C. 290aa), 503 (42 U.S.C. 290aa-2), and 505 (42 U.S.C. 290aa-4). CSAT: Center for Substance Abuse Treatment, section 507-12 (42 U.S.C. 290bb et. seq.). CSAP:

Center for Substance Abuse Prevention, section 515-18 (42 U.S.C. 290bb-21 et seq.). CMHS: Center for Mental Health Services, sections 506 (42 U.S.C. 290aa-5) and 520-35 (42 U.S.C. 290bb-31 et seq.). Protection and Advocacy for Individuals with Mental Illness Act of 1986 as amended (42 U.S.C. 10801 et seq.); Refugee Education Assistance Act of 1980, section 501(c) (8 U.S.C. 1522 note), Pub. L. 96-422; Executive Order 12341; and Disaster Relief Act of 1974, section 413, Pub. L. 93-288, as amended by section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100-107

PURPOSE(S):

The purpose of the system of records is to collect and maintain a data base for health services evaluations activities of the Center for Substance Abuse Prevention, the Center for Substance Abuse Treatment, and the Center for Mental Health Services. Analyses of these data involve groups of individuals with given characteristics and do not refer to special individuals. The generation of information and statistical analyses will ultimately lead to a better description and understanding of mental, alcohol, and/or drug abuse disorders, their diagnosis, treatment and prevention, and the promotion of good physical and mental health.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record may be disclosed for an evaluation purpose, when the Department:

(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; e.g., disclosure of alcohol or drug abuse patient records will be made only in accordance with 42 U.S.C. 290 (dd-2).

(b) Has determined that the study purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) Has required the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the health services evaluation project, unless the recipient has presented adequate justification of

an analytical or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another health service research or evaluation project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the evaluation project, if information that would enable study subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; and

(d) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by, these provisions.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from a congressional office made at the written request of that individual.

3. In the event of litigation, where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee; the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected (e.g., disclosure may be made to the Department of Justice or other appropriate Federal agencies in defending claims against the United States when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of the individuals' participation in activities of a Federal Government supported research project).

4. The Department contemplates that it will contract with a private firm for the purpose of collecting, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on index cards, file folders, computer tapes and disks, microfiche, microfilm, and audio and video tapes. Normally, the factual data, with study code numbers, are stored on computer tape or disk, while the key to personal identifiers is stored separately, without factual data, in paper files.

RETRIEVABILITY:

During data collection stages and follow up, if any, retrieval by personal identifier (e.g., name, social security number) (in some studies), or (medical record number), is necessary. During the data analysis stage, data are normally retrieved by the variables of interest (e.g., diagnosis, age, occupation).

SAFEGUARDS:

1. *Authorized users:* Access to identifiers and to link files is strictly limited to the authorized personnel whose duties require such access. Procedures for determining authorized access to identified data are established as appropriate for each location. Personnel, including contractor personnel, who may be so authorized include those directly involved in data collection and in the design of research studies, e.g., interviewers and interviewer supervisors; project managers; statisticians involved in designing sampling plans.

2. *Physical safeguards:* Records are stored in locked rooms, locked file cabinets, and/or secured computer facilities. Personal identifiers and link files are separated as much as possible and stored in locked files. Computer data access is limited through the use of key words known only to authorized personnel.

3. *Procedure safeguards:* Collection and maintenance of data is consistent with legislation and regulations in the protection of human subjects, informed consent, confidentiality, and confidentiality specific to drug and alcohol abuse patients where these apply. When an Institute Division or a contractor provides anonymous data to research scientists for analysis, study numbers which can be matched to personal identifiers will be eliminated, scrambled, or replaced by the agency or contractor with random numbers which cannot be matched. Contractors who maintain records in this system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and evaluation activities related to this system. The HHS project

directors, contract officers, and project officers oversee compliance with these requirements.

4. *Implementation guidelines:* DHHS Chapter 45— and supplementary Chapter PHS hf: 45—13 of the General Administration Manual and Part 6, "ADP System Security" of the HHS ADP Systems Security Manual.

RETENTION AND DISPOSAL:

Personal identifiers are retained only as long as they are needed for the purposes of the current evaluation project, and for follow-up studies generated by the present study. Removal or disposal of identifiers is done according to the storage medium (e.g., erase computer tape, shred or burn index cards, etc.). A staff person designated by the System Manager will oversee and will describe and confirm the disposal in writing.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Applied Studies, Office of the Director, Room 615, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857
Center for Substance Abuse Prevention, Office of the Director, Room 9D10, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857
Center for Substance Abuse Treatment, Office of the Director, Room 10—75, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857
Center for Mental Health Services, Office of the Director, Room 15—105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate System Manager at the address above. Provide individual's name; current address; date of birth; date, place and nature of participation in specific evaluation study; name of individual or organization administering the study (if known); name or description of the study (if known); address at the time of participation; and a notarized statement by two witnesses attesting to the individual's identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

An individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to

review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

CONTESTING RECORD PROCEDURE:

Contact the appropriate official at the address specified under System Manager(s) above and reasonably identify the record, specify the information being contested, and state corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

The system contains information obtained directly from the subject individual by interview (face-to-face or telephone), by written questionnaire, or by other tests, recording devices or observations, consistent with legislation and regulation regarding informed consent and protection of human subjects. Information is also obtained from other sources, such as health, mental health, alcohol, and/or drug abuse care providers; relatives; guardians; and clinical medical research records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0047

SYSTEM NAME:

Patient Records on Chronic Mentally Ill Merchant Seamen Treated at Nursing Homes in Lexington, Kentucky, (1942 to the present), HHS/SAMHSA/CMHS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

CONTRACTOR: Commonwealth of Kentucky, Department of Mental Health/Mental Retardation, Mental Health Branch, Cabinet for Human Resources, 275 E. Main Street, Frankfort, Kentucky 40621

SUBCONTRACTORS: Homestead Nursing Center, Inc., 1608 Versailles Road, Lexington, Kentucky 40505

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Chronic mentally ill former merchant seamen originally treated at PHS

Hospitals in Fort Worth, Texas, and Lexington, Kentucky, and now in nursing homes in Lexington, Kentucky (1942 to the present).

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative records, such as admission and release dates; name, address, Social Security number, and other demographic data; medical records, such as, but not limited to, psychological, medical and social evaluations as well as treatment information, any laboratory test, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 9079 (1942) authorizes the care and treatment of these individuals.

PURPOSE(S):

The records are used to facilitate patient care, to monitor progress, and to ensure quality and continuity of care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. In the event of litigation where the defendant is (a) the Department, and component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

2. Disclosure may be made to the Center for Mental Health Services (CMHS) contractors and subcontractors, including nursing home staff, for the purpose of carrying out and maintaining quality care. Contractors maintain, and are also required to ensure that the subcontractors maintain, Privacy Act safeguards with respect to the records.

3. Disclosure may also be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual or his legally authorized representative.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy files stored in locked file cabinets in the State office. In the

nursing homes records are hard copy maintained at nursing stations.

RETRIEVABILITY:

The records are retrieved by patient name.

SAFEGUARDS:

1. *Authorized users:* Only the System Manager and designated staff, designated contractor staff and appropriate subcontractor staff at the nursing home.

2. *Physical safeguards:* The State records are stored in locked file cabinets. These cabinets are in a room within a building that is locked at night after business hours. Patient records of subject individuals at the nursing homes are commingled with the records of other patients at nursing stations under the supervision of the attendant on duty.

3. *Procedural safeguards:* Only the System Manager, contractor staff and appropriate nursing home staff have access to the files. Only those authorized personnel are allowed to gain access to material in the locked file cabinets.

4. *Implementation procedures:* DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 in the General Administration Manual.

RETENTION AND DISPOSAL:

The administrative and medical records will be retained for 25 years after last treatment or after the death of a patient, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

James E. Pittman, Construction Monitoring Branch, Center for Mental Health Services, Substance Abuse and Mental Health Services, Administration, Room 15C-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists; write to the System Manager at the address above. An individual or his legally authorized representative may learn if a record exists about himself upon written request with notarized signature. The request should include full name or any alias used and birth date.

An individual or his legally authorized representative who requests notification of, or access to, a medical record shall, at the time the request is made, designate a family physician or other health professional (other than a family member) to whom the record will be released. The representative must verify relationship to the individual as well as his/her own identity

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Requestors should also reasonably specify the record contents being sought. An individual or his legally authorized representative may also request an accounting of disclosures that have been made of the subject individual's records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information to be contested, and state the corrective action sought with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Patients; legally authorized representatives; nursing home and hospital personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0049

SYSTEM NAME:

Consultant Records Maintained by SAMHSA Contractors, HHS/SAMHSA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located at various contractor sites. A list of specific contractor sites is available from the appropriate system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consultants who participate in Substance Abuse and Mental Health Services Administration (SAMHSA) conferences, meetings, evaluation projects, or technical assistance at site locations arranged by contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, Social Security numbers, qualifications, curricula vitae, travel records, and payment records for consultants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

SAMHSA: Public Health Service Act, sections 301 (42 U.S.C. 241), 322 (42 U.S.C. 249(c)), and 501-05 (42 U.S.C. 290aa et seq.). CSAT: Center for Substance Abuse Treatment, section 507-12 (42 U.S.C. 290bb et seq.). CSAP: Center for Substance Abuse Prevention, section 515-8 (42 U.S.C. 290bb-21 et seq.). CMHS: Center for Mental Health

Services, sections 506 (42 U.S.C. 290aa-5) and 520-35 (42 U.S.C. 290bb-31 et seq.). Protection and Advocacy for Individuals with Mental Illness Act of 1986 as amended (42 U.S.C. 10801 et seq.); Refugee Education Assistance Act of 1980, section 501(c) (8 U.S.C. 1522 note), Pub. L. 96-422; Executive Order 12341; and Disaster Relief Act of 1974, section 413, Pub. L. 93-288, as amended by section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100-107.

PURPOSE(S):

This umbrella system of records covers a varying number of separate sets of records used in different projects. These records are established by contractors to organize programs, obtain and pay consultants, and to provide necessary reports programs for SAMHSA. SAMHSA personnel may use records when a technical assistance consultant is needed for a specialized area of research, review, advice, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

3. SAMHSA proposes to contract with private firms for the purposes of handling logistics for conferences, reviews, development of training materials, and of obtaining the services of consultants. Relevant records will be disclosed to such a contractor or may be developed by the contractor for use in

the project. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. Information in this system of records is used routinely to prepare W-2 and 1099 Forms to submit to the Internal Revenue Service and applicable State and local governments those items to be included as income to an individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records may be stored in file folders, on index cards, computer tapes and disks, microfiche, microfilm.

RETRIEVABILITY:

Information will be retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location. Each site implements personnel, physical, and procedural safeguards such as the following:

1. *Authorized users:* Only SAMHSA personnel working on these projects and personnel employed by SAMHSA contractors to work on these projects are authorized users as designated by the system managers.

2. *Physical safeguards:* Records are stored in locked rooms, locked file cabinets, and/or secured computer facilities.

3. *Procedural safeguards:* Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts and in agreements with grantees or collaborators participating in research activities supported by this system. HHS project directors, contract officers, and project officers oversee compliance with these requirements.

4. *Implementation guidelines:* DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual, and Part 6, "ADP System Security" in the HHS Information Resource Management Manual.

RETENTION AND DISPOSAL:

Records will be destroyed 3 years after they are no longer used, or, if payment is involved, 3 years after closeout of the contract.

SYSTEM MANAGER(S) AND ADDRESS:

The policy coordinating official for this system of records is also the System

Manager, SAMHSA Contracts Officer, Substance Abuse and Mental Health Services Administration, Office of the Administrator, Office of Management, Planning, and Communications, Room 13C-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate System Manager at the address above. Provide notarized signature as proof of identity. The request should include as much of the following information as possible: (a) Full name; (b) title of project individual participated in; (c) SAMHSA project officer, and (d) approximate date(s) of participation.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information gathered from individual consultants and from assignment or travel documents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Readers who notice any errors or omissions in the SAMHSA systems of records notices are invited to bring them to my attention at the following address: Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 12-105, Rockville, Maryland 20857.

Dated: December 17, 1993.

Richard Kopanda,
Acting Executive Officer, Substance Abuse and Mental Health Services Administration.
[FR Doc. 93-31242 Filed 12-28-93; 8:45 am]
BILLING CODE 4162-20

ACTION: Privacy Act: Annual republication of notices of revised systems of records.

SUMMARY: The National Institutes of Health (NIH) has conducted a comprehensive review of all Privacy Act systems of records and is publishing the resulting revisions. None of the revisions meet the OMB criteria for a new or altered system of records requiring an advance period for public comment. These changes are in compliance with Circular A-130, Appendix 1. The notices republished below are complete and accurate as of November 29, 1993.

SUPPLEMENTARY INFORMATION: The following information summarizes the current status of systems of records which had minor modifications during 1993 and lists all systems maintained by NIH:

A. SYSTEM NAME.

The following systems have been updated to reflect a change in the name of the system:

- 09-25-0105, Administration: Health Records of Employees, Visiting Scientists, Fellows, Contractors and Relatives of Inpatients, HHS/NIH/ORS.
- 09-25-0106, Administration: Office of the NIH Director and Institute/Center/Division Correspondence Records, HHS/NIH/OD.
- 09-25-0108, Personnel: Guest Researchers, Special Volunteers, and Scientists Emeriti, HHS/NIH/DPM.
- 09-25-0134, Clinical Research: Epidemiology Studies, National Institute of Environmental Health Sciences, HHS/NIH/NIEHS.
- 09-25-0156, Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the Public Health Service, HHS/PHS/NIH/OD.
- 09-25-0170, Diabetes Clinical Data System, HHS/NIH/NIDDK.

B. SYSTEM LOCATION.

The following systems have been updated to reflect a change in the system locations. These changes do not affect the access by the individual to the individual's records.

- 09-25-0005, Administration: Library Operations and User I.D. File, HHS/NIH/OD.
- 09-25-0007, Administration: NIH Safety Glasses Issuance Program, HHS/NIH/ORS.
- 09-25-0031, Clinical Research: Serological and Virus Data in Studies Related to the Central Nervous System, HHS/NIH/NINDS.
- 09-25-0060, Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI.
- 09-25-0069, NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI.
- 09-25-0105, Administration: Health Records of Employees, Visiting Scientists, Fellows, Contractors and Relatives of Inpatients, HHS/NIH/ORS.

- 09-25-0106, Administration: Office of the NIH Director and Institute/Center/Division Correspondence Records, HHS/NIH/OD.
- 09-25-0108, Personnel: Guest Researchers, Special Volunteers, and Scientists Emeriti, HHS/NIH/DPM.
- 09-25-0112, Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD.
- 09-25-0158, Administration: Records of Applicants and Awardees of the NIH Intramural Research Training Awards Program, HHS/NIH/OD.
- 09-25-0165, National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program, HHS/NIH/OD.
- 09-25-0208, Drug Abuse Treatment Outcome Study (DATOS), HHS/NIH/NIDA.

C. CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM.

The following systems have been updated to reflect a change in the categories covered by the system. This change does not alter the character or purpose of the system.

- 09-25-0106, Administration: Office of the NIH Director and Institute/Center/Division Correspondence Records, HHS/NIH/OD.
- 09-25-0156, Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the Public Health Service, HHS/PHS/NIH/OD.
- 09-25-0161, Administration: NIH Consultant File, HHS/NIH/DRG.
- 09-25-0208, Drug Abuse Treatment Outcome Study (DATOS), HHS/NIH/NIDA.

D. CATEGORIES OF RECORDS.

The following systems have been updated to reflect a change in the categories of records in the system. This change does not alter the character or purpose of the system.

- 09-25-0161, Administration: NIH Consultant File, HHS/NIH/DRG.

E. AUTHORITY.

The following system has been updated to reflect a change in the authority. This change does not alter the character or purpose of the system.

- 09-25-0156, Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the Public Health Service, HHS/PHS/NIH/OD.

F. STORAGE.

The following systems have been updated to reflect a change in system storage practices:

- 09-25-0134, Clinical Research: Epidemiology Studies, National Institute of Environmental Health Sciences, HHS/NIH/NIEHS.
- 09-25-0145, Clinical Trials and Epidemiological Studies Dealing with Visual Disease and Disorders in the National Eye Institute, HHS/NIH/NEI.
- 09-25-0203, National Institute on Drug Abuse, Addiction Research Center, Federal

National Institutes of Health
Privacy Act of 1974; Annual
Publication of Systems of Records
AGENCY: Public Health Service, DHHS.

Prisoner and Non-Prisoner Research Files, HHS/NIH/NIDA.

G. RETRIEVAL.

The following systems have been updated to reflect a change in retrieval practices.

09-25-0105, Administration: Health Records of Employees, Visiting Scientists, Fellows, Contractors and Relatives of Inpatients, HHS/NIH/ORS.

09-25-0161, Administration: NIH Consultant File, HHS/NIH/DRG.

H. SAFEGUARDS:

There are no changes in this category.

I. RETENTION AND DISPOSAL:

The following systems have been updated to reflect a change in retention and disposal:

09-25-0105, Administration: Health Records of Employees, Visiting Scientists, Fellows, Contractors and Relatives of Inpatients, HHS/NIH/ORS.

09-25-0106, Administration: Office of the NIH Director and Institute/Center/Division Correspondence Records, HHS/NIH/OD.

J. SYSTEM MANAGER(S) AND ADDRESSES:

The following systems have been updated to reflect a change in the system manager or the address of the system manager. These changes do not affect the access by the individual to the individual's records.

09-25-0005, Administration: Library Operations and User I.D. File, HHS/NIH/OD.

09-25-0037, Clinical Research: Baltimore Longitudinal Study of Aging, HHS/NIH/NIA.

09-25-0042, Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR.

09-25-0046, Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID.

09-25-0060, Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI.

09-25-0069, NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI.

09-25-0106, Administration: Office of the NIH Director and Institute/Center/Division Correspondence Records, HHS/NIH/OD.

09-25-0108, Personnel: Guest Researchers, Special Volunteers, and Scientists Emeriti, HHS/NIH/DPM.

09-25-0112, Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD.

09-25-0115, Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID.

09-25-0118, Contracts: Professional Services Contractors, HHS/NIH/NCI.

09-25-0143, Biomedical Research: Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute

of Allergy and Infectious Diseases, HHS/NIH/NIAID.

09-25-0145, Clinical Trials and Epidemiological Studies Dealing with Visual Disease and Disorders in the National Eye Institute, HHS/NIH/NEI.

09-25-0156, Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the Public Health Service, HHS/PHS/NIH/OD.

09-25-0161, Administration: NIH Consultant File, HHS/NIH/DRG.

09-25-0165, National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program, HHS/NIH/OD.

09-25-0205, Alcohol, Drug Abuse, and Mental Health Epidemiologic and Biometric Research Data, HHS/NIH/NIAAA, HHS/NIH/NIDA and HHS/NIH/NIMH.

09-25-0208, Drug Abuse Treatment Outcome Study (DATOS), HHS/NIH/NIDA.

K. RECORD ACCESS:

The following system has been updated to reflect a change in the record access procedures.

09-25-0112, Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD.

09-25-0156, Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the Public Health Service, HHS/PHS/NIH/OD.

L. NOTIFICATION PROCEDURES:

The following systems have been updated to reflect a change in the office, official, and/or address to write in order to determine whether or not the system contains a record about the individual.

09-25-0046, Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID.

09-25-0115, Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID.

09-25-0143, Biomedical Research: Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute of Allergy and Infectious Diseases, HHS/NIH/NIAID.

09-25-0158, Administration: Records of Applicants and Awardees of the NIH Intramural Research Training Awards Program, HHS/NIH/OD.

M. THE FOLLOWING SYSTEMS HAVE BEEN CHANGED FOR CLARITY AND EDITING PURPOSES:

09-25-0036, Extramural Awards and Chartered Advisory Committees: IMPAC (Grant/Contract/Cooperative Agreement/Chartered Advisory Committee, HHS/NIH/DRG and HHS/NIH/CMO).

09-25-0037, Clinical Research: Baltimore Longitudinal Study of Aging, HHS/NIH/NIA.

09-25-0038, Clinical Research: Patient Data, HHS/NIH/NIDDK.

09-25-0106, Administration: Office of the NIH Director and Institute/Center/Division Correspondence Records, HHS/NIH/OD.

09-25-0112, Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD.

09-25-0128, Clinical Research: Neural Prosthesis and Biomedical Engineering Studies, HHS/NIH/NINDS.

09-25-0134, Clinical Research: Epidemiology Studies, National Institute of Environmental Health Sciences, HHS/NIH/NIEHS.

09-25-0156, Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the Public Health Service, HHS/PHS/NIH/OD.

09-25-0161, Administration: NIH Consultant File, HHS/NIH/DRG.

09-25-0208, Drug Abuse Treatment Outcome Study (DATOS), HHS/NIH/NIDA.

N. ORGANIZATION NAME CHANGE:

There are no changes in this category

O. DELETED SYSTEMS OF RECORDS:

The following systems of records which appeared in the January 13, 1993, annual publication are now being deleted because:

09-25-0075, Institutions Submitting Assurances for Protection from Research Risks and Animal Welfare, HHS/NIH/OD/OER.

System records are now filed by organization/institution and are no longer filed under individual names.

09-25-0204, Records of Contracts Awarded to Individuals, HHS/NIH/NIDA, HHS/NIH/NIAAA and HHS/NIH/NIMH.

System records are now filed by organization/institution and are no longer filed under individual names.

09-25-0206, Psychotherapy of Opiate-Dependent Individual, HHS/NIH/NIDA.

Personal identifiers have been deleted from the system.

The following is a list of active systems of records maintained by NIH.

Table of Contents

09-25-0001, Clinical Research: Patient Records, HHS/NIH/NHLBI, published **Federal Register**, Vol. 55, Number 101, May 24, 1990.

09-25-0005, Administration: Library Operations and User I.D. File, HHS/NIH/OD, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.

09-25-0007, Administration: NIH Safety Glasses Issuance Program, HHS/NIH/ORS, published **Federal Register**, Vol. 56, No. 8, January 11, 1991.

09-25-0010, Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.

09-25-0011, Clinical Research: Blood Donor Records, HHS/NIH/CC, published **Federal Register**, Vol. 56, Number 247, December 24, 1991.

- 09-25-0012, Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0014, Clinical Research: Student Records, HHS/NIH/CC, published **Federal Register**, Vol. 56, No. 8, January 11, 1991.
- 09-25-0015, Clinical Research: Collaborative Clinical Epilepsy Research, HHS/NIH/NINDS, published **Federal Register**, Vol. 56, No. 8, January 11, 1991.
- 09-25-0016, Clinical Research: Collaborative Perinatal Project HHS/NIH/NINDS, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0026, Clinical Research: Nervous System Studies, HHS/NIH/NINDS, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0028, Clinical Research: Patient Medical Histories, HHS/NIH/NINDS and HHS/NIH/NIDCD, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0031, Clinical Research: Serological and Virus Data in Studies Related to the Central Nervous System, HHS/NIH/NINDS, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0033, International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0034, International Activities: Scholars-in-Residence Program, HHS/NIH/FIC, published **Federal Register**, Vol. 56, No. 8, January 11, 1991.
- 09-25-0035, International Activities: Health Scientist Exchange Programs, HHS/NIH/FIC, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0036, Extramural Awards and Chartered Advisory Committees: IMPAC (Grant/Contract/Cooperative Agreement/Chartered Advisory Committee, HHS/NIH/DRG and HHS/NIH/CMO, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0037, Clinical Research: The Baltimore Longitudinal Study of Aging, HHS/NIH/NIA, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0038, Clinical Research: Patient Data, HHS/NIH/NIDDK, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0039, Clinical Research: Diabetes Mellitus Research Study of Southwestern American Indians, HHS/NIH/NIDDK, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0040, Clinical Research: Southwestern American Indian Patient Data, HHS/NIH/NIDDK, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0041, Research Resources: Scientists Requesting Hormone Distribution, HHS/NIH/NIDDK, published **Federal Register**, Vol. 56, No. 8, January 11, 1991.
- 09-25-0042, Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR, published **Federal Register**, Vol. 56, No. 8, January 11, 1991.
- 09-25-0044, Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDR, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0046, Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0053, Clinical Research: Vision Studies, HHS/NIH/NEI, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0054, Administration: Property Accounting, HHS/NIH/ORS, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0057, Clinical Research: Burkitt's Lymphoma Registry, HHS/NIH/NCI, published **Federal Register**, Vol. 56, No. 8, January 11, 1991.
- 09-25-0060, Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0067, Clinical Research: National Cancer Incidence Surveys, HHS/NIH/NCI, published **Federal Register**, Vol. 56, No. 8, January 11, 1991.
- 09-25-0069, NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI, published **Federal Register**, Vol. 58, Number 8, January 13, 1993.
- 09-25-0074, Clinical Research: Division of Cancer Biology and Diagnosis Patient Trials, HHS/NIH/NCI, published **Federal Register**, Vol. 56, No. 8, January 11, 1991.
- 09-25-0077, Biological Carcinogenesis Branch Human Specimen Program, HHS/NIH/NCI, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0078, Administration: Consultant File, HHS/NIH/NHLBI, published **Federal Register**, Vol. 56, No. 8, January 11, 1991.
- 09-25-0087, Administration: Senior Staff, HHS/NIH/NIAID, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0091, Administration: General Files on Employees, Donors and Correspondents, HHS/NIH/NEI, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0093, Administration: Administration Authors, Reviewers and Members of the Journal of the National Cancer Institute, HHS/NIH/NCI, published **Federal Register**, Vol. 56, No. 8, January 11, 1991.
- 09-25-0099, Clinical Research: Patient Medical Records, HHS/NIH/CC, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0100, Clinical Research: Neuropharmacology Studies, HHS/NIH/NINDS, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0102, Administration: Grants Associates Program Working Files, HHS/NIH/DRG, published **Federal Register**, Vol. 56, No. 8, January 11, 1991.
- 09-25-0105, Administration: Health Records of Employees, Visiting Scientists, Fellows, Contractors and Relatives of Inpatients, HHS/NIH/ORS, published **Federal Register**, Vol. 56, No. 8, January 11, 1991.
- 09-25-0106, Administration: Office of the NIH Director and Institute/Center/Division Correspondence Records, HHS/NIH/OD, published **Federal Register**, Vol. 56, No. 8, January 11, 1991.
- 09-25-0108, Personnel: Guest Researchers, Special Volunteers, and Scientists Emeriti, HHS/NIH/DPM, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0112, Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0115, Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0118, Contracts: Professional Services Contractors, HHS/NIH/NCI, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0121, International Activities: Senior International Fellowships Program, HHS/NIH/FIC, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0124, Administration: Pharmacology Research Associates, HHS/NIH/NIGMS, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0126, Clinical Research: National Heart, Lung, and Blood Institute Epidemiological and Biometric Studies, HHS/NIH/NHLBI, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0128, Clinical Research: Neural Prosthesis and Biomedical Engineering Studies, HHS/NIH/NINDS, published **Federal Register**, Vol. 56, No. 8, January 11, 1991.
- 09-25-0129, Clinical Research: Clinical Research Studies Dealing with Hearing, Speech, Language and Chemosensory Disorders, HHS/NIH/NIDCD, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0130, Clinical Research: Studies in the Division of Cancer Cause and Prevention, HHS/NIH/NCI, published **Federal Register**, Vol. 56, No. 8, January 11, 1991.
- 09-25-0134, Clinical Research: Epidemiology Studies, National Institute of Environmental Health Sciences, HHS/NIH/NIEHS, published **Federal Register**, Vol. 56, No. 8, January 11, 1991.
- 09-25-0140, International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0142, Clinical Research: Records of Subjects in Intramural Research, Epidemiology, Demography and Biometry Studies on Aging, HHS/NIH/NIA, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0143, Biomedical Research: Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute of Allergy and Infectious Diseases, HHS/NIH/NIAID, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0145, Clinical Trials and Epidemiological Studies Dealing with Visual Disease and Disorders in the

- National Eye Institute, HHS/NIH/NEI, published **Federal Register**, Vol. 56, No. 8, January 11, 1991.
- 09-25-0148, Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological Disorders and Stroke and the National Institute on Deafness and Other Communication Disorders, HHS/NIH/NINDS and HHS/NIH/NIDCD, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0151, Administration: Public Health Service ALERT Records Concerning Individuals Under Investigation for Possible Misconduct In Science or Subject to Sanctions for Such Misconduct, HHS/PHS/OSR, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0152, Biomedical Research: Records of Subjects in National Institute of Dental Research Contracted Epidemiological and Biometric Studies, HHS/NIH/NIDR, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0153, Biomedical Research: Records of Subjects in Biomedical and Behavioral Studies of Child Health and Human Development, HHS/NIH/NICHD, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0154, Biomedical Research Records of Subjects: (1) Cancer Studies of the Division of Cancer Prevention and Control, HHS/NIH/NCI; and (2) Women's Health Initiative (WHI) Studies, HHS/NIH/OD, published **Federal Register**, Vol. 58, Number 8, January 13, 1993.
- 09-25-0156, Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the Public Health Service, HHS/PHS/NIH/OD, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0158, Administration: Records of Applicants and Awardees of the NIH Intramural Research Training Awards Program, HHS/NIH/OD, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0160, United States Renal Data System (USRDS), HHS/NIH/NIDDK, published **Federal Register**, Vol. 56, No. 8, January 11, 1991.
- 09-25-0161, Administration: NIH Consultant File, HHS/NIH/DRG, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0165, National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program, HHS/NIH/OD, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0166, Administration: Radiation Safety Information, HHS/NIH/ORS, published **Federal Register**, Vol. 56, No. 247, December 24, 1991.
- 09-25-0167, National Institutes of Health (NIH) Transshare Program, HHS/NIH/OD, published **Federal Register**, Vol. 57, No. 171, September 2, 1992.
- 09-25-0168, Invention, Patent and Licensing Documents Submitted to the Public Health Service by its Employees, Grantees, Fellowship Recipients and Contractors, HHS/PHS/NIH/OTT, published **Federal Register**, Vol. 58, No. 164, August 26, 1993.

- 09-25-0170, Diabetes Control and Complications Trial (DCCT) Data System, HHS/NIH/NIDDK, published **Federal Register**, Vol. 58, No. 107, June 7, 1993.
- 09-25-0201, Clinical Research: National Institute of Mental Health Patient Records, HHS/NIH/NIMH, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0202, Patient Records on PHS Beneficiaries (1935-1974) and Civilly Committed Drug Abusers (1967-1976) Treated at the PHS Hospitals in Fort Worth, Texas, or Lexington, Kentucky, HHS/NIH/NIDA, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0203, National Institute on Drug Abuse, Addiction Research Center, Federal Prisoner and Non-Prisoner Research Files, HHS/NIH/NIDA, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0205, Alcohol, Drug Abuse, and Mental Health Epidemiologic and Biometric Research Data, HHS/NIH/NIAAA, HHS/NIH/NIDA and HHS/NIH/NIMH, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0207, Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse, HHS/NIH/NIDA, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0208, Drug Abuse Treatment Outcome Study (DATOS), HHS/NIH/NIDA, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0209, Subject-Participants in Drug Abuse Research Studies Supporting New Drug Applications, HHS/NIH/NIDA, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0210, Shipment Records of Drugs of Abuse to Authorized Researchers, HHS/NIH/NIDA, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 09-25-0211, Intramural Research Program Records of In- and Out-Patients With Various Types of Alcohol Abuse and Dependence, Relatives of Patients With Alcoholism, and Healthy Volunteers, HHS/NIH/NIAAA, published **Federal Register**, Vol. 58, No. 8, January 13, 1993.
- 9-25-0212, Clinical Research: Neuroscience Research Center Patient Medical Records, HHS/NIH/NIMH, published **Federal Register**, Vol. 58, No. 8, January 13, 1993. Dated: December 7, 1993.

Harold Varmus,
Director, National Institutes of Health.

09-25-0005

SYSTEM NAME:

Administration: Library Operations and User I.D. File, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is an umbrella system comprising separate sets of records located in National Institutes of Health (NIH) facilities in Bethesda, Maryland, or facilities of contractors of the NIH. Write to the appropriate system manager listed below for list of current contractor locations.

National Institutes of Health, Building 10, Room 1L07, 9000 Rockville Pike, Bethesda, MD 20892 and National Institutes of Health, Building 12A, Room 3018, 9000 Rockville Pike, Bethesda, MD 20892 and National Institutes of Health, Building 38, Room 1S33, 8600 Rockville Pike, Bethesda, MD 20894 and National Institutes of Health, Building 38, Room 1N21, 8600 Rockville Pike, Bethesda, MD 20894 and National Institutes of Health, Building 38, Room B1E21, 8600 Rockville Pike, Bethesda, MD 20894 and National Institutes of Health, Building 38A, Room 4N419, 8600 Rockville Pike, Bethesda, MD 20894 and National Technical Information Service, Accounting Department, 8001 Forbes Place, Room 208F, Springfield, Virginia 22151

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of Library Services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, organization, address, phone number, user code and identification number; and when applicable, credit card number and billing information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 301 of the Public Health Service Act, describing the general powers and duties of the Public Health Service relating to research and investigation (42 U.S.C. 241).

PURPOSE(S):

(1) To monitor library material, services, and circulation control; (2) to provide user documentation; (3) to provide copying services (duplication of library materials); and (4) to manage invoice and billing transactions for library services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof

where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. Disclosure may be made to contractors and staff to monitor library material, services, circulation control; to provide user documentation; and to process or refine the records. Recipients are required to maintain Privacy Act safeguards with respect to those records.

4. Disclosure may be made for billing purposes to: (a) Contractors providing copying services; and (b) NTIS for Medlars Services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer tape and disc, microfiche, paper and file cards.

RETRIEVABILITY:

Records are retrieved by name, user code and/or identification number.

SAFEGUARDS:

1. *Authorized users:* Employees who maintain records in this system are instructed to grant regular access only to Library staff members who need to verify that Library identification cards have been issued to those Library users requesting services such as MEDLINE and other computer online bibliographic searches, translations and interlibrary loans. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager. The contractor maintains a list of personnel having authority to access records to perform their duties.

2. *Physical safeguards:* The offices housing the cabinets and file drawers for storage of records are locked during all library off-duty hours. During all duty hours offices are attended by employees who maintain the files. The contractor has secured records storage areas which are not left unattended during the working hours and file cabinets which are locked after hours.

3. *Procedural safeguards:* Access to the file is strictly controlled by employees who maintain the files. Records may be removed from files only

at the request of the system manager or other authorized employees. Access to computerized records is controlled by the use of security codes known only to authorized users. Contractor personnel receive instruction concerning the significance of safeguards under the Privacy Act.

These practices are in compliance with the standards of Chapter 45-13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45-13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—'Keeping and Destroying Records' (HHS Records Management Manual, Appendix B-361), item 8000-D-2, which allows records to be kept until superseded or for a maximum period of 6 years. Refer to the NIH Manual Chapter for specific conditions on disposal.

SYSTEM MANAGERS AND ADDRESS:

The Policy Coordinating Official for this system is the Management Analyst, Office of Administration; National Library of Medicine; Building 38, Room 2N21; 8600 Rockville Pike; Bethesda, MD 20894.

Chief, Reference and Bibliographic Services Section, Library Branch, National Center for Research Resources, National Institutes of Health, Building 10, Room 1L21, 9000 Rockville Pike, Bethesda, MD 20892 and

Chief, Division of Computer Research and Technology Library, National Institutes of Health, Building 12A, Room 3018, 9000 Rockville Pike, Bethesda, MD 20892 and

Supervisory Librarian, Preservation Section, Public Services Division, Library Operations, National Library of Medicine, National Institutes of Health, Building 38, Room B1E21, 8600 Rockville Pike, Bethesda, MD 20894 and

Chief, Public Services Division, Library Operations, National Library of Medicine, National Institutes of Health, Building 38, Room 1S33, 8600 Rockville Pike, Bethesda, MD 20894 and

Head, Prints and Photographs Collection, History of Medicine Division, NLM, NIH, Building 38, Room 1N21, 8600 Rockville Pike, Bethesda, MD 20894 and
Chief, Medlars Management Section, Bibliographic Services Division, Library Operations, National Institutes of Health, National Library of Medicine, Building 38A, Room 4N419, 8600 Rockville Pike, Bethesda, MD 20894.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individual, NIH Library ID card data.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0007

SYSTEM NAME:

Administration: NIH Safety Glasses Issuance Program, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 13, Room G904, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Write to the system manager at the address below for the address of any

Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NIH employees who apply for safety glasses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Explanation of eye impact and hazard occupation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902.

PURPOSE(S):

Records are used for proper distribution of safety glasses and for proof of delivery.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the

particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. *Authorized users:* Access is limited to personnel involved in safety glasses issuance program, to supervisors of employees who have requested glasses and to personnel involved in accounting.

2. *Physical safeguards:* Record storage locations are locked when unattended.

3. *Procedural safeguards:* Access to file rooms and files is controlled by system manager or designee. ♦

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 1300-B-3, which allows records to be kept for a maximum period of 5 years. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Division of Safety, ORS, Building 31, Room 1C02, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Write to the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting information to how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Previous employer and education institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0031

SYSTEM NAME:

Clinical Research: Serological and Virus Data in Studies Related to the Central Nervous System, HHS/NIH/NINDS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 36, Room 4B07, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients with possible perinatal, acute or chronic diseases and normal volunteers in NIH-related studies pertaining to the central nervous system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Clinical records, laboratory test results for viruses, pathology and identifications and characterizations of etiological agents of diseases under study, and curriculum vitae.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289h.

PURPOSE(S):

Clinical research by HHS scientists and their authorized collaborators and research on blood serum, specifically to discover the role of infections (particularly those caused by a virus) in diseases of the central nervous system and also to study the role of vaccines in these diseases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Clinical research data are made available to approved or collaborating researchers, including HHS contractors and grantees.

2. Certain diseases and conditions, including infectious diseases may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

3. Information may be used to respond to Congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in laboratory notebooks, papers, file folders, cinematography and photography.

RETRIEVABILITY:

Records are retrieved by name and number.

SAFEGUARDS:

1. *Authorized users:* Employees who maintain records in this system are instructed to grant access only to HHS scientists and their assistants and authorized collaborators.

2. *Physical safeguards:* Records are kept in cabinets which are locked at all times that system is not in use, in a location which is also locked when system is not in use.

3. *Procedural safeguards:* Personnel having access to system have been trained in Privacy Act requirements. Records are used in a designated work area and the system location is attended at all times during working hours.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIM Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief, Laboratory of Central Nervous Systems Studies, Intramural Research Program, Building 36, Room 5B21, NIH 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact: Chief, Administrative Services Branch, NINDS Building 31, Room 8A49, NIH 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Hospital records, volunteers and laboratory data.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0036

SYSTEM NAME:

Extramural Awards and Chartered Advisory Committees: IMPAC (Grant/Contract/Cooperative Agreement Information/Chartered Advisory Committee Information), HHS/NIH/DRG and HHS/NIH/CMO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892 and Building 12, NIH Computer Center, 9000 Rockville Pike, Bethesda, MD 20892, and

For information pertaining to the chartered advisory committees of the National Institutes of Health: Building 31, Room 3B-55, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicant and Principal Investigators; Program Directors; NRSA Trainees and Fellows; Research Career Awardees; and Chartered Advisory Committee Members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, awards, associated records, trainee appointments, and current and historical information pertaining to chartered advisory committees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241c, 58 Stat. 691 c & d repealed.

PURPOSES:

(1) To support centralized grant programs of the Public Health Service. Services are provided in the areas of grant application assignment and referral, initial review, council review, award processing and grant accounting. The data base is used to provide complete, accurate, and up-to-date reports to all levels of management. (2) To maintain communication with former fellows and trainees who have incurred a payback obligation through the National Research Service Award Program. (3) To maintain current and historical information pertaining to the establishment of chartered advisory committees of the National Institutes of Health and the appointment or designation of their members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to the National Technical Information Service (NTIS), Department of Commerce, for dissemination of scientific and fiscal information on funded awards (abstract of research projects and relevant administrative and financial data).
2. Disclosure may be made to the cognizant audit agency for auditing.
3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.
4. Disclosure may be made to qualified experts not within the

definition of Department employees as prescribed in Department Regulations for opinions as a part of the application review process.

5. Disclosure may be made to a Federal agency, in response to its request, in connection with the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision in the matter.

6. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

7. The Department contemplates that it may contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records.

8. Disclosure may be made to the grantee institution in connection with

performance or administration under the conditions of the award.

9. Disclosure may be made to the Department of Justice, or to a court or other tribunal, from this system of records when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on discs and magnetic tapes.

RETRIEVABILITY:

Records are retrieved by name, application, grant or contract ID number.

SAFEGUARDS:

1. *Authorized users:* Employees who maintain records in this system are instructed to grant regular access only to PHS extramural and committee management staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical safeguards:* Physical access to DRG work areas is restricted to DRG employees.

3. *Procedural safeguards:* Access to source data files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employee. Access to computer files is controlled by the use of registered accounts, registered initials, keywords, etc. The computer system maintains an audit record of all attempted and successful requests for access.

These practices are in compliance with the standards of Chapter 45-13 of the HHS General Administration

Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45-13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 4000-A-2, which allows records to be destroyed when no longer needed for administrative purposes. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Systems Branch,
Division of Research Grants,
Westwood Building, 5333 Westbard
Avenue, Bethesda, MD 20892 and
For information pertaining to the
chartered advisory committees of the
National Institutes of Health: NIH
Committee Management Officer,
Building 31, Room 3B-55, 9000
Rockville Pike, Bethesda, MD 20892

NOTIFICATION PROCEDURE:

To determine if a record exists write to:
Privacy Act Coordinator, Division of
Research Grants, Westwood Building,
Room 449, 5333 Westbard Avenue,
Bethesda, MD 20892 and

For information pertaining to the
chartered advisory committees of the
National Institutes of Health: NIH
Committee Management Officer,
Building 31, Room 3B-55, 9000
Rockville Pike, Bethesda, MD 20892

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individual, individual's educational institution and references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0037

SYSTEM NAME:

Clinical Research: Baltimore Longitudinal Study of Aging, HHS/NIH/NIA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 12, 9000 Rockville Pike, Bethesda, MD 20892 and Longitudinal Studies Branch, IRP, NIA, Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Voluntary participants in the Gerontology Research Center (GRC) Longitudinal Study of Aging.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories, psychological and physical test results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289k-2, k-4. Health Research Extension Act of 1985 Pub. L. 99-158.

PURPOSE(S):

Research on the human aging process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

3. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are stored in file folders and on computer files, and on microfiche.

RETRIEVABILITY:

Records are retrieved by ID number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. *Authorized users:* Employees who maintain records in this system are instructed to grant regular access only to the clinical, research and support staff of the GRC. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical safeguards:* Hard copy files are kept in locked file cabinets.

3. *Procedural safeguards:* Access to manual files is strictly controlled by files staff. Files may be removed only at the request of the system manager or other authorized employee. Access to

computer files is controlled through security codes known only to authorized users.

These practices are in compliance with the standards of Chapter 45-13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45-13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Computer Scientist, Longitudinal Studies Branch, IRP, National Institutes of Health, Gerontology Research Center, GRC, 4940 Eastern Avenue, Baltimore, MD 21224.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requestor must also verify his or her identity by providing either a notarization of the request or a written certification that the requestor is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

Individuals seeking notification of or access to medical records should designate a representative (including address) who may be a physician, other health professional, or other responsible individual, who would be willing to review the record and inform the subject individual of its contents, at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individuals, research staff, test results.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0038

SYSTEM NAME:

Clinical Research: Patient Data, HHS/NIH/NIDDK.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 10, Room 9N222, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients of the National Institute of Diabetes, and Digestive and Kidney Diseases (NIDDK).

CATEGORIES OF RECORDS IN THE SYSTEM:

Patient history, demographic data, miscellaneous correspondence with patients.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 281a, 289c.

PURPOSE(S):

(1) Care and treatment of patients with diabetic, endocrine, metabolic, digestive, liver or kidney diseases; (2) Experimentation and investigation on the etiology, treatment and prevention of diabetic, endocrine, metabolic, digestive, liver or kidney diseases; (3) Administration of these clinical and research programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain

Privacy Act safeguards with respect to these records.

2. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

3. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are stored in file folders and on magnetic tape.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location. Each site implements personnel, physical, and procedural safeguards such as the following:

1. *Authorized users:* Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the NIDDK whose duties require the use of such information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical safeguards:* Records are kept in a limited access area. Offices are locked during off-duty hours. Input data

for computer files is coded to avoid individual identification.

3. *Procedural safeguards:* Access to manual files is strictly controlled by files staff. Files may be removed only at the request of the system manager or other authorized employee. Access to computer files is controlled through security codes known only to authorized users. Access codes are changed frequently.

These practices are in compliance with the standards of Chapter 45-13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45-13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESSES:

National Institutes of Health, Chief, Clinical Investigations, NIDDK, Building 10, Room 9N222, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURES:

To determine if a record exists write to: National Institutes of Health, Administrative Officer, Building 31, Room 9A46, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0042

SYSTEM NAME:

Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 10, Room 1B01, 9000 Rockville Pike, Bethesda, MD 20892.

Write to system manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients and other participants in current and past research projects of the National Institute of Dental Research (NIDR).

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical and dental histories, dental pathologies and therapies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 301, 401, 405 and 453 of the Public Health Service Act (42 U.S.C. 241, 281, 284, 285h). These sections establish the National Institute of Dental Research and authorize the conduct and support of dental and oral research and related activities.

PURPOSE(S):

(1) To record the diagnosis and treatment of patients with diseases of the mouth, tongue, teeth and surrounding tissues; (2) To record the

normal condition of the mouth, tongue, teeth and surrounding tissues of individuals referred to the dental clinic; (3) To provide clinical data for research into the etiology, treatment and prevention of oral diseases; (4) For review and planning of the NIDR clinical program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the clinical and research purposes for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

3. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, when a claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and hospital ID number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as

appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. *Authorized users:* Employees who maintain records in this system are instructed to grant regular access only to dentists, physicians, dental hygienists, dental assistants and other health care personnel involved in the care and treatment of patients in the NIDR dental clinic, and to referring professionals. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical safeguards:* Records are stored in a cabinet which is locked at all times when not in use.

3. *Procedural safeguards:* Access is controlled by clerical staff of the Dental Clinic during clinic hours, and by the Officer of the Day when the clinic is closed.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—“Keeping and Destroying Records” (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

National Institutes of Health, Deputy Clinical Director, NIDR, Building 10, room 1N-113, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists contact: NIDR Privacy Act Coordinator, building 31, room 2C-35, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or

incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individual, parents or guardians.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0046

SYSTEM NAME:

Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 7, Rooms 106 and 202, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients, volunteers, laboratory personnel in the National Institute of Allergy and Infectious Diseases (NIAID).

CATEGORIES OF RECORDS IN THE SYSTEM:

Clinical specimens, attendant data and laboratory results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE(S):

For diagnostic and epidemiologic studies of viral respiratory diseases and hepatitis, conducted by NIAID staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

3. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, when a claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are stored in data books.

RETRIEVABILITY:

Records are retrieved by name, patient or study number.

SAFEGUARDS:

1. *Authorized users:* Employees who maintain records in this system are instructed to grant regular access only to HHS scientists conducting research, and staff whose duties require the use of such information. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the System Manager.

2. *Physical safeguards:* Data books are kept in locked rooms. Offices are locked during off-duty hours.

3. *Procedural Safeguards:* Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the System Manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—“Keeping and Destroying Records” (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Respiratory Viruses Section, LID, NIAID, Building 7, Room 106, NIH, 9000 Rockville Pike, Bethesda, MD 20892 and
Chief, Hepatitis Virus Section, LID, NIAID, Building 7, Room 202, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: Privacy Act Coordinator, NIAID, Solar Building, Room 3C-23, 6003 Executive Blvd., Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedure above. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and

specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants and from medical records, field study records, and clinical research observations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0060

SYSTEM NAME:

Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, 8601 Old Georgetown Road, Bethesda, MD 20892 and Frederick Cancer Research and Development Center, Building 426, Frederick, MD 21701 and National Cancer Institute, Biological Response Modifiers Program (BRMP), 501 W. 7th Street, Suite #3, Frederick, MD 21701 and National Cancer Institute, Navy Hospital, Building 8, Room 3146, Bethesda, MD 21814 and National Cancer Institute, Pharmaceutical Management Branch, Cancer Therapy Evaluation Program, DCT, Executive Plaza North, Suite 804, Bethesda, MD 20892 and at hospitals and clinics, educational and research institutions, Federal, State or local government agencies, and private facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All patients who have been hospitalized or seen in outpatient clinics on treatment research protocols in the National Cancer Institute.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 281, 282.

PURPOSE(S):

(1) Patient care and treatment. (2) Clinical and epidemiological research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. Disclosure may be made to a contractor when the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tapes, microcomputer disks, index cards, microfiche, and manual paper records.

RETRIEVABILITY:

Records are retrieved by patient name or number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as

appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. *Authorized users:* Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the National Cancer Institute, or its contractors, whose duties require the use of such information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical safeguards:* Records are kept in a limited access area. Offices are locked during off-duty hours. Input data for computer files is coded to avoid individual identification.

3. *Procedural safeguards:* Access to manual files is strictly controlled by files staff. Files may be accessed only at the request of the system manager or other authorized employee. Access to computer files is controlled through security codes known only to authorized users. Access codes are changed frequently.

These practices are in compliance with the standards of Chapter 45-13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45-13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESSES:

Head, Biostatistics and Data Management Section, National Institutes of Health, 8601 Old Georgetown Road, Bethesda, MD 20892, and Chief, Clinical Research Branch, Biological Response Modifiers Program, Frederick Cancer Research and Development Center, 501 W. 7th Street, Suite #3, Frederick, MD 21701, and

Navy Hospital, Deputy Branch Chief, NCI—Naval Medical Oncology Branch, Building 8, Room 5101, Bethesda, MD 20814, and Chief, Pharmaceutical Management Branch, Cancer Therapy Evaluation Program, DCT, National Cancer Institute, Executive Plaza North, Suite 804, Bethesda, MD 20892, and Director, Extramural Clinical Studies, BRB, BRMP, Division of Cancer Treatment, National Cancer Institute, Frederick Cancer Research and Development Center, Fort Detrick, Frederick, MD 21701

NOTIFICATION PROCEDURE:

Write to system manager for the appropriate location to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Hospital medical records, referring physician, referring hospitals, clinical

laboratories, patient contact, and Central Tumor Registries.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0069

SYSTEM NAME:

NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCL

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Genetic and Clinical Epidemiology Branches, DCE, Executive Plaza North, Rooms 400 and 439, 6130 Executive Blvd., Bethesda, MD 20892 and National Institutes of Health, Division of Computer Research and Technology, Building 12A, 9000 Rockville Pike, Bethesda, MD 20892 and WESTAT, Inc., Manugistics Building, Suite 402, 2115 E. Jefferson Street, Rockville, MD 20852 and Survey Research Associates, Inc., Manugistics Building, Suite 400, 2115 E. Jefferson Street, Rockville, MD 20852

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former cancer patients and their family members admitted to the NIH Clinical Center or the National Cancer Institute (NCI).

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories, reports and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 285a.

PURPOSE(S):

National Cancer Institute physicians and supporting staff are involved in research on the cause and diagnosis of disease and the treatment of patients, requiring the maintenance of working files to chart progress, responses to treatment, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain

Privacy Act safeguards with respect to these records.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. Disclosure may be made to a contractor when the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

5. (a) PHS may inform the sexual and/or needle-sharing partner(s) of a subject individual who is infected with the human immunodeficiency virus (HIV) of their exposure to HIV, under the following circumstances: (1) The information has been obtained in the course of clinical activities at PHS facilities carried out by PHS personnel or contractors; (2) The PHS employee or contractor has made reasonable efforts to counsel and encourage the subject individual to provide the information to the individual's sexual or needle-sharing partner(s); (3) The PHS employee or contractor determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified; and (4) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a

professional counselor and shall follow standard counseling practices.

(b) PHS may disclose information to State or local public health departments, to assist in the notification of the subject individual's sexual and/or needle-sharing partner(s), or in the verification that the subject individual has notified such sexual or needle-sharing partner(s).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and on computer files.

RETRIEVABILITY:

Records are retrieved by identification number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. *Authorized users:* Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the National Cancer Institute and the Clinical Center whose duties require the use of such information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical safeguards:* Records are kept in limited access areas. Offices are locked during off-duty hours. Input data for computer files is coded to avoid individual identification.

3. *Procedural safeguards:* Access to manual files is strictly controlled by files staff. Files may be accessed only at the request of the system manager or other authorized employee. Access to computer files is controlled through security codes known only to authorized users. Access codes are changed frequently.

These practices are in compliance with the standards of Chapter 45-13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45-13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31)

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 3000-C-3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

National Institutes of Health, National Cancer Institute, Division of Cancer Etiology, Epidemiology and Biostatistics Program, Chief, Genetic Epidemiology Branch, Executive Plaza North, Suite 439, Bethesda, MD 20892 and

Chief, Clinical Genetics Section, Clinical Epidemiology Branch, Executive Plaza North, Suite 400, Bethesda, MD 20892

NOTIFICATION PROCEDURE:

Write to system manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably

identify the record and specify the information to be contested, and state the corrective action sought. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Patients' personal physicians, NIH staff treating the patients or performing tests, requested outside records, and patients themselves.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0087

SYSTEM NAME:

Administration: Senior Staff, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 31, Room 7A32, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former key professional employees of the Institute and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Press releases, curriculum vitae, nominations for awards and photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(d) 289a.

PURPOSES:

For background records to provide public announcements on National Institute of Allergy and Infectious Diseases (NIAID) research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. *Authorized users:* Employees who maintain records in this system are instructed to grant regular access only to staff whose duties require the use of such information. Authorized users are located in the Office of the Director, NIAID. Other one time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical safeguards:* Records in this system are stored in file folders which are kept in locked cabinets. The room is locked during off-duty hours.

3. *Procedural safeguards:* Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 1100-G. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Communications, National Institutes of Health, Building 31, Room 7A-32, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: National Institutes of Health, Privacy Act Coordinator, NIAID, Solar Bldg., Room 3C-23, 6003 Executive Blvd., Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as record notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the System Manager at the address above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individuals and newspaper clippings.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0105

SYSTEM NAME:

Administration: Health Records of Employees, Visiting Scientists, Fellows, Contractors and Relatives of Inpatients, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 10 and 13, NIH, 9000 Rockville Pike, Bethesda, MD. 20892
Westwood Building, 5333 Westbard Ave., Bethesda, MD. 20892
Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857
Rocky Mountain Laboratories, Hamilton, Montana 59840

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, fellows, visiting scientists, relatives of inpatients, visitors, contractors working on site.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901.

PURPOSE(S):

1. For medical treatment;
2. Upon researcher request with individual's written permission, release of record for research purposes to medical personnel;
3. Upon request by HHS personnel offices for determination of fitness for duty, and for disability retirement and other separation actions;
4. For monitoring personnel to assure that safety standards are maintained.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to Federal, State, and local government agencies for adjudication of benefits under

workman's compensation, and for disability retirement and other separation actions.

2. To district office of OPEC, Department of Labor with copies to the U.S. Office of Personnel Management for processing of disability retirement and other separation actions.

3. Upon non-HHS agency request, for examination to determine fitness for duty with copies to requesting agency and to the U.S. Office of Personnel Management.

4. Disclosure may be made to a congressional office from the record of an individual in response to any inquiry from the congressional office made at the request of the individual.

5. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and SSN.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project.

Each site implements personnel, physical and procedural safeguards such as the following:

1. *Authorized users:* Access is limited to authorized personnel (system manager and staff; Occupational

Medicine Service staff; and personnel and administrative officers with need for information for fitness for duty, disability, and other similar determinations.)

2. *Physical safeguards:* Files are maintained in locked cabinets.

3. *Procedural safeguards:* Access to files is strictly controlled by authorized staff.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule, Manual Chapter 1743 (IHHS Records Management Manual, Appendix B-361), item 2300-792-3.

SYSTEM MANAGER(S) AND ADDRESSES:

Deputy Director, Division of Safety, NIH Building 31, Room 1C02, 9000 Rockville Pike, Bethesda, MD 20892
Chief, Rocky Mountain Operations Branch, Rocky Mountain Laboratories (RML), National Institutes of Health Hamilton, MT 59840

NOTIFICATION PROCEDURE:

Contact System Manager at appropriate treatment location listed above, to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to 5,000 dollar fine.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requester should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Records contain data resulting from clinical and preventative services provided at treatment location, and data received from individual

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0106

SYSTEM NAME:

Administration: Office of the NIH Director and Institute/Center/Division Correspondence Records, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Executive Secretariat, Office of the Director, Building 1, Room B1-55, 9000 Rockville Pike, Bethesda, MD 20892

Office of Legislative Policy and Analysis, Office of the Director, Building 1, Room 244, 9000 Rockville Pike, Bethesda, MD 20892, and Institute/Center/Division Staff Offices that retain correspondence files.

Write to the appropriate system manager listed in Appendix I for a list of current locations and for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have contacted the NIH Director or his/her subordinates, or have been contacted in writing by one of these officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and other supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 44 U.S.C. 3101.

PURPOSE(S):

1. To control and track all correspondence documents addressed or directed to the NIH Director or his/her subordinates, as well as documents/supporting documents initiated by them, in order to assure timely and appropriate attention.

2. Incoming correspondence and supporting documentation is forwarded to other HHS components when a response from them is warranted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made from this system of records by the Department of Health and Human Services (HHS) to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any

component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored by computer index and in file folders.

RETRIEVABILITY:

Records are retrieved by name, document number, date, and subject.

SAFEGUARDS:

1. *Authorized users:* Access to textual records is limited to authorized personnel (system managers and staff).

2. *Physical safeguards:* Physical access to records is restricted to authorized personnel.

3. *Procedural safeguards:* Access to textual records is strictly controlled by system managers and staff. Records may be removed from files only at the request of system managers or other authorized employees. Computer files are password protected.

These practices are in compliance with the standards of Chapter 45-13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45-13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records"

(HHS Records Management Manual, Appendix B-361), item 1700-C, which allows records to be kept for a maximum period of 6 years. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

System Managers are listed in Appendix I; each maintains full responsibility for their specific correspondence system.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate system manager as listed in Appendix I. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Records are derived from incoming and outgoing correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I: System managers

Director, Executive Secretariat, Office of the Director, Building 1, Room B1-55, 9000 Rockville Pike, Bethesda, MD 20892

Acting Associate Director, Office of Legislative Policy and Analysis, Office of the Director, Building 1, Room 244, 9000 Rockville Pike, Bethesda, MD 20892

National Cancer Institute (NCI), Secretary to the Director, Building 31, Room 11A48, Bethesda, MD 20892

National Heart, Lung and Blood Institute (NHLBI), Secretary to the Director, Building 31, Room 5A52, Bethesda, MD 20892

National Institute of Diabetes and Digestive and Kidney (NIDDK), Director, OHRR,

Building 31, Room 9A04, Bethesda, MD 20892

National Institute of Environmental Health Sciences (NIEHS), Executive Secretariat, P.O. Box 12233, South Campus, Building 2, Room B201, Research Triangle Park, NC 27709

National Eye Institute (NEI), Administrative Officer, Building 31, Room 6A17, Bethesda, MD 20892

National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), Director, Office of Scientific and Health Communications, Building 31, Room 4C05, Bethesda, MD 20892

National Institute on Deafness and Other Communication Disorders (NIDCD), Chief, Administrative Management Branch, Building 31, Room 3C21, Bethesda, MD 20892

National Institute of General Medical Sciences (NIGMS), Secretary to the Director, Westwood Building, Room 926, Bethesda, MD 20892

National Library of Medicine (NLM), Staff Assistant, Office of the Director, Building 38, Room 2E17, Bethesda, MD 20894

Fogarty International Center (FIC), Secretary to the Director, Building 31, Room B2C06, Bethesda, MD 20892

Office of AIDS Research (OAR), Special Assistant for Liaison Activities, Building 31, Room 5C12, Bethesda, MD 20892

National Institute on Drug Abuse (NIDA), Executive Secretariat, Room 10-15, Parklawn Building, Rockville, MD 20857

National Institute on Alcohol Abuse and Alcoholism (NIAAA), Executive Secretariat, Room 16-97, Parklawn Building, Rockville, MD 20857

National Institute of Mental Health (NIMH), Executive Secretariat, Room 17C-25, Parklawn Building, Rockville, MD 20857
Washington National Records Center, 4205 Suitland Road, Washington, DC 20857

09-25-0108

SYSTEM NAME:

Personnel: Guest Researchers, Special Volunteers, and Scientists Emeriti, HHS/NIH/DPM.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system is located in the personnel/administrative offices of individual Institutes/Centers/Divisions of the National Institutes of Health.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals using NIH facilities who are not NIH employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information including name, address, date and place of birth, education, employment, purpose for which NIH facilities are desired, outside sponsor, and NIH sponsor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(a)(2), 42 U.S.C. 282(b)(10), and 42 U.S.C. 284(b)(1)(k).

PURPOSE(S):

To determine eligibility to use NIH facilities, to document the individual's presence at NIH, and to record that the individual is not an employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to U.S. Office of Personnel Management for program evaluation purposes; to General Accounting Office for fund disbursement determinations.

2. Disclosure may be made to institutions providing financial support.

3. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the request of that individual.

4. Disclosure may be made to the Department of Justice or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are retrieved by name

SAFEGUARDS:

For each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. *Authorized users:* Access is granted only to personnel staff, administrative office staff and management officials

directly involved in the administration of the Guest Researcher, Special Volunteer and Scientist Emeriti programs.

2. *Physical safeguards:* Record facilities are locked when system personnel are not present.

3. *Procedural safeguards:* Access to files is strictly controlled by system personnel. Records may be removed from the file only with the approval of the system manager or other authorized employees.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 2300-320-3(a), which allows records to be destroyed after a maximum period of 2 years after the individual completes work at NIH. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESSES:

Personnel/Administrative Officers of National Institutes of Health Institutes/Centers/Divisions.

NOTIFICATION PROCEDURE:

To determine if a record exists and where it is located, contact: National Institutes of Health, Division of Personnel Management, Privacy Act Coordinator, Building 31, Room 1C39, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Contact the Personnel Officer or Administrative Officer in whose office the record is located and provide verification of identity as described under notification procedure above. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your

reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual, NIH sponsor, funding institution.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0112

SYSTEM NAME:

Grants and Cooperative Agreements; Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

See Appendix I.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Grant applicants and Principal Investigators; Program Directors; Institutional and Individual Fellows; Research Career Awardees; and other employees of Applicant and/or grantee institutions.

CATEGORIES OF RECORD IN THE SYSTEM:

Grant and cooperative agreement applications and review history, awards, financial records, progress reports, paycheck records, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

"Research and Investigation," "Appointment and Authority of the Directors of the National Research Institutes," "National Institute of Mental Health," "National Institute on Drug Abuse," "National Institute on Alcohol Abuse and Alcoholism," "National Cancer Institute," "National Heart, Lung and Blood Institute," "National Institute of Diabetes, and Digestive and Kidney Diseases," "National Institute of Arthritis and Musculoskeletal and Skin Diseases," "National Institute on Aging," "National Institute on Allergy and Infectious Diseases," "National Institute of Child Health and Human Development," "National Institute of Dental Research," "National Eye Institute," "National Institute of Neurological Disorders and Stroke," "National Institute of General Medical Sciences," "National Institute of

Environmental Health Sciences," "National Institute on Deafness and Other Communication Disorders," "National Institute of Nursing Research," and the "National Library of Medicine," of the Public Health Service Act. (42 U.S.C. 241, 284, 285, 285(b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), 286b-286b-7.

PURPOSE(S):

1. Information provided is used by NIH staff for review, award, and administration of grant programs.
2. Information is also used to maintain communication with former fellows who have incurred an obligation through the National Research Service Award Program.
3. Staff may also use curriculum vitae to identify candidates who may serve as ad hoc consultants or committee and council members in the grant peer review process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made of assignments of research investigators and project monitors to specific research projects to the National Technical Information Service (NTIS), Department of Commerce, to contribute to the Smithsonian Science Information Exchange, Inc.
2. Disclosure may be made to the cognizant audit agency for auditing.
3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.
4. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.
5. Disclosure may be made to qualified experts not within the definition of Department employees as prescribed in Department Regulations, 45 CFR 56.2, for opinions as a part of the application review and award administration processes.

6. Disclosure may be made to a Federal agency, in response to its request, in connection with the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

7. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected; or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

8. Disclosure may be made to a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in a system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records;

9. Disclosure may be made to the grantee institution in connection with the review of an application or performance or administration under the terms and conditions of the award, or in connection with problems that might arise in performance or

administration if an award is made on a grant proposal.

10. Disclosure may be made to the profit institution's president or official responsible for signing the grant application in connection with the review or award of a grant application and in connection with the administration and performance of a grant under the terms and conditions of the awards.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12):

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

The Department may disclose to consumer reporting agencies information on individuals who have failed to meet payback obligations incurred under awards made under authority of the National Research Service Awards Program (41 U.S.C. 2891-1). Information disclosed includes data identifying the individual, the amount, status and history of the obligation, and that the obligation arose from an award made under the National Research Service Awards Program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders, on computer tapes and discs, cards and in notebooks.

RETRIEVABILITY:

Retrieved by name and grant number.

SAFEGUARDS:

A variety of physical and procedural safeguards are implemented, as appropriate, at the various locations of this system:

1. *Authorized users:* Employees who maintain records in this system are instructed to grant regular access only to officials whose duties require use of the information. These officials include review groups, grants management staff, other extramural program staff, health science administrators, data processing and analysis staff and management officials with oversight responsibilities for extramural programs. Other one-time and special access is granted on an individual basis as specifically authorized by the system manager. Authorization for access to computerized files is controlled by the system manager or designated official

and is granted on a need-to-know basis. Lists of authorized users are maintained.

2. *Physical safeguards:* Secured facilities, locked rooms, locked cabinets, personnel screening; records stored in order of grant numbers which are randomly assigned.

3. *Procedural safeguards:* Access to file rooms and files is strictly controlled by files staff or other designated officials; charge-out cards identifying users are required for each file used; inactive records are transferred to controlled storage in Federal Records Center in a timely fashion; retrieval of records from inactive storage is controlled by the system manager or designated official and by the NIH Records Management Officer; computer files are password protected and access is actively monitored by the Computer Center to prevent abuse. Employees are given specialized training in the requirements of the Privacy Act as applied to the grants program.

These particular safeguards are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS hf: 45-13, and Part 6, "ADP Systems Security", of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), items: 4000-B-1; 4000-B-4; 4000-C-1 and, 4600-D-1. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

See Appendix II.

NOTIFICATION PROCEDURE:

Write to official at the address specified in Appendix II to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Write to the official at the address specified in Appendix IV to obtain access to a record, and provide the same information as is required under the Notification Procedures above. Requesters should also reasonably specify the record contents being sought.

Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified in Appendix II, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information submitted by applicant; supplemented by outside reviewers and internal staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I: System Location

National Cancer Institute, Executive Plaza South, Suite T-42, 6120 Executive Boulevard, Bethesda, MD 20892
 National Heart, Lung, and Blood Institute, Westwood Building, Room 4A09, 5333 Westbard Avenue, Bethesda, MD 20892
 National Library of Medicine, Building 38A, Room 5N509, 8600 Rockville Pike, Bethesda, MD 20894
 National Institute of Allergy and Infectious Diseases, Acting Chief, Grants Management Branch, DEA, Solar Bldg., Room 4C-09, 6003 Executive Blvd., Rockville, MD 20892
 National Institute of Allergy and Infectious Diseases, Acting Chief, Management Information Systems Section, FMISB, OAM, Solar Building, Room 4A-03733, 6003 Executive Blvd., Rockville, MD 20892
 National Institute of Diabetes and Digestive and Kidney Diseases, Westwood Building, Room 610, 5333 Westbard Avenue, Bethesda, MD 20892
 National Institute of Arthritis and Musculoskeletal and Skin Diseases, Westwood Building, Room 5A03, 5333 Westbard Avenue, Bethesda, MD 20892
 National Institute of Child Health and Human Development, 6100 Executive Blvd., Room 7A07, Bethesda, MD 20892
 National Institute on Aging, Gateway Building, Room 2N-212, 7201 Wisconsin Avenue, Bethesda, MD 20892
 National Institute of Dental Research, Grants Management Officer, Westwood Building, Room 518, Bethesda, MD 20892

National Institute of Environmental Health Sciences, Grants Management Officer, Building 2, Room 204, 104 Alexander Drive, Research Triangle Park, NC 27709
 National Institute of General Medical Sciences, Grants Management Officer, Westwood Building, Room 953, 5333 Westbard Avenue, Bethesda, MD 20892
 National Institute of Neurological Disorders and Stroke, Federal Building, Room 10A12, 7550 Wisconsin Avenue, Bethesda, MD 20892
 National Institute on Deafness and Other Communication Disorders, Executive Plaza South, Room 400B, 6120 Executive Boulevard, Rockville, MD 20852
 National Eye Institute, Executive Plaza South, Room 350, 6120 Executive Boulevard, Bethesda, MD 20892
 National Center for Research Resources, Westwood Building, Room 853, 5333 Westbard Avenue, Bethesda, MD 20892
 National Institute of Nursing Research, Westwood Building 31, Room 748, 5333 Westbard Avenue, Bethesda, MD 20892
 Fogarty International Center, Building 31, Room B2C32, 9000 Rockville Pike, Bethesda, MD 20892
 Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409
 National Institute on Drug Abuse, Grants Management Branch, Room 8A-54, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857
 National Institute on Alcohol Abuse and Alcoholism, Grants Management Branch, Room 16-86, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857
 National Institute of Mental Health, Grants Management Branch, ORM, Room 7C-15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857

Appendix II: System Manager and Address

National Cancer Institute, Grants Management Analyst, Executive Plaza South, Suite 234, 6120 Executive Boulevard, Bethesda, MD 20892
 National Heart, Lung, and Blood Institute, Chief, Grants Operations Branch, Division of Extramural Affairs, Westwood Building, Room 4A10, 5333 Westbard Avenue, Bethesda, MD 20892
 National Library of Medicine, Associate Director for Extramural Programs, Building 38A, Room 5N505, 8600 Rockville Pike, Bethesda, MD 20894
 National Institute of Allergy and Infectious Diseases, Acting Chief, Grants Management Branch, DEA, Solar Bldg., Room 4B-21, 6003 Executive Blvd., Bethesda, MD 20892
 National Institute of Allergy and Infectious Diseases, Acting Chief, Management Information Systems Section, FMISB, OAM, Solar Building, Room 4A-03, 6003 Executive Blvd., Bethesda, MD 20892
 National Institute of Arthritis and Musculoskeletal and Skin Diseases, Grants Management Officer, Westwood Building, Room 407, 5333 Westbard Avenue, Bethesda, MD 20892
 National Institute of Diabetes and Digestive and Kidney Disease, Grants Management Officer, Room 637, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892

National Institute of Child Health and Human Development, Chief, Office of Grants & Contracts, 6100 Executive Blvd., Room 8A01, Bethesda, MD 20892
 National Institute on Aging, Grants Management Officer, Gateway Building, Room 2N-212, 7201 Wisconsin Avenue, Bethesda, MD 20892
 National Institute of Dental Research, Grants Management Officer, NIDR, Westwood Building, Room 518, 5333 Westbard Avenue, Bethesda, MD 20892
 National Institute of Environmental Health Sciences, Grants Management Officer, Building 2, Room 204, 104 Alexander Drive, Research Triangle Park, N.C. 27709
 National Institute of General Medical Sciences, Grants Management Officer, NIGMS, Westwood Building, Room 953, Bethesda, MD 20892
 National Institute of Neurological Disorders and Stroke, Grants Management Officer, Federal Building, Room 1004A, Bethesda, MD 20892
 National Institute on Deafness and Other Communication Disorders, Grants Management Officer, Executive Plaza South, Room 400B, 6120 Executive Boulevard, Rockville, MD 20892
 National Institute of Nursing Research, Grants Management Officer, Westwood Building, Room 748, 5333 Westbard Avenue, Bethesda, MD 20892
 National Eye Institute, Grants Management Officer, Executive Plaza South, Room 350, 6120 Executive Boulevard, Bethesda, MD 20892
 National Center for Research Resources, Director, Office of Grants and Contracts Management, Westwood Building, Room 853, 5333 Westbard Avenue, Bethesda, MD 20892
 Fogarty International Center, Scientific Review Administrator, International Studies Branch, Building 31, Room B2C32, 9000 Rockville Pike, Bethesda, MD 20892
 National Institute on Drug Abuse, Chief, Grants Management Branch, Room 8A-54, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857
 National Institute on Alcohol Abuse and Alcoholism, Chief, Grants Operation Section, Room 16-86, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857
 National Institute of Mental Health, Grants Management Officer, ORM, Room 7C-15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857

Appendix III: Notification Procedures

National Cancer Institute, See Appendix II
 National Heart, Lung, and Blood Institute, Privacy Act Coordinator, Building 31, Room 5A08, Bethesda, MD 20892
 National Library of Medicine, See Appendix II
 National Institute of Allergy and Infectious Diseases, See Appendix II
 National Institute of Diabetes and Digestive and Kidney Diseases, Administrative Officer, Building 31, Room 9A46, 9000 Rockville Pike, Bethesda, MD 20892
 National Institute of Child Health and Human Development, See Appendix II
 National Institute of Aging, See Appendix II
 National Institute of Dental Research, NIDR Privacy Act Coordinator, Building 31,

Room 2C-35, 9000 Rockville Pike, Bethesda, MD 20892

National Institute of Environmental Health Sciences, See Appendix II

National Institute of General Medical Sciences, See Appendix II

National Institute of Neurological Disorders and Stroke, See Appendix II

National Institute on Deafness and Other Communication Disorders, See Appendix II

National Eye Institute, See Appendix II

National Center for Nursing Research, See Appendix II

National Center for Research Resources, See Appendix II

Fogarty International Center, See Appendix II

National Institute on Drug Abuse, See Appendix II

National Institute on Alcohol Abuse and Alcoholism, See Appendix II

National Institute of Mental Health, Privacy Act Coordinator, Room 15-81, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857

Appendix IV: Records Access Procedures

National Cancer Institute, Privacy Act Coordinator, Building 31, Room 10A30, 9000 Rockville Pike, Bethesda, MD 20892

National Heart, Lung, and Blood Institute, See Appendix III

National Library of Medicine, See Appendix II

National Institute of Allergy and Infectious Diseases, Privacy Act Coordinator, Solar Bldg., Room 3C-23, Bethesda, MD 20892

National Institute of Diabetes and Digestive and Kidney Diseases, See Appendix II

National Institute of Child Health and Human Development, See Appendix II

National Institute on Aging, See Appendix II

National Institute of Dental Research, Grants Management Officer, Westwood Building, Room 518, 5333 Westbard Avenue, Bethesda, MD 20892

National Institute of Environmental Health Sciences, See Appendix II

National Institute of General Medical Sciences, Privacy Act Coordinator, Westwood Building, Room 722, Bethesda, MD 20892

National Institute of Neurological Disorders and Stroke, Chief, Administrative Services Branch, Building 31, Room 8A49, 9000 Rockville Pike, Bethesda, MD 20892

National Institute on Deafness and Other Communication Disorders, Chief, Administrative Management Branch, Building 31, Room 3C02, 9000 Rockville Pike, Bethesda, MD 20892

National Eye Institute, Administrative Officer, Building 31, Room 6A17, 9000 Rockville Pike, Bethesda, MD 20892

National Center for Research Resources, Privacy Act Coordinator, Westwood Building, Room 10A15, 5333 Westbard Avenue, Bethesda, MD 20892

Fogarty International Center, See Appendix II

National Institute on Drug Abuse, See Appendix II

National Institute on Alcohol Abuse and Alcoholism, See Appendix II

National Institute of Mental Health, See Appendix II

National Institute of Nursing Research, See Appendix II.

09-25-0115

SYSTEM NAME:

Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Solar Bldg., Room 3A01, 6003 Executive Blvd., Bethesda, MD 20892 and
Ogden BioServices Corporation, 621A Lofstrand Lane, Rockville, MD 20850

Write to the System Manager at the address below for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consultants and Clinical Investigators under National Institute of Allergy and Infectious Diseases (NIAID) Investigational New Drug Applications.

CATEGORIES OF RECORDS IN THE SYSTEM:

Curriculum vitae.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a.

PURPOSE(S):

(1) To maintain a record of the investigators under Investigational New Drug (IND) applications, and (2) To appoint consultants to the NIAID Institutional Review Board (IRB).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation

and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Stored in books.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. *Authorized users:* Employees who maintain records in this system are instructed to grant regular access only to NIAID staff whose duties require the use of such information. Authorized users are located in the Clinical and Regulatory Affairs Branch, Division of Microbiology and Infectious Diseases, NIAID. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. *Physical safeguards:* Building is locked during off-duty hours.

3. *Procedural safeguards:* Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 1100-G. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Clinical and Regulatory Affairs Branch, DMID, NIAID, Solar Bldg., Room 3A-01, 6003 Executive Blvd., Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: NIAID Privacy Act Coordinator, Solar Bldg., Room 3C-23, 6003 Executive Blvd., Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written

certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as record notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0118

SYSTEM NAME:

Contracts: Professional Services Contractors, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 31, Room 3A52, DCT, 9000 Rockville Pike, Bethesda, MD 20892
 Building 31, Room 11A33, OD, 9000 Rockville Pike, Bethesda, MD 20892
 Executive Plaza North, Room 604, DEA, 9000 Rockville Pike, Bethesda, MD 20892
 Building 31, Room 11A11, DCE, 9000 Rockville Pike, Bethesda, MD 20892
 Building 31, Room 10A50, DCPC, 9000 Rockville Pike, Bethesda, MD 20892

Write to System Manager at the address below for the address of the Federal Records Center where records may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals under contract with the National Cancer Institute.

CATEGORIES OF RECORDS IN THE SYSTEM:

Professional Services Contracts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(d), 281.

PURPOSE(S):

Used by staff for general administrative purposes to assure compliance with contract program requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Stored in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

1. *Authorized users:* Access is limited to authorized personnel (system manager and staff).

2. *Physical safeguards:* Records are maintained in offices which are locked when not in use.

3. *Procedural safeguards:* Access to files is strictly controlled by system manager and staff.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—“Keeping and Destroying Records” (HHS Records Management Manual, Appendix B-361), item 2600-A-4, which allows records to be destroyed after a maximum period of 6 years and 3 months after final payment. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESSES:

Administrative Officer, DCT, Building 31, Room 3A52, 9000 Rockville Pike, Bethesda, MD 20892

Administrative Officer, OD, National Institutes of Health, Building 31, Room 11A33, 9000 Rockville Pike, Bethesda, MD 20892

Administrative Officer, DEA, Executive Plaza North, Room 604, 9000 Rockville Pike, Bethesda, MD 20892

Administrative Officer, DCE, Building 31, Room 11A11, 9000 Rockville Pike, Bethesda, MD 20892

Administrative Officer, DCPC, Building 31, Room 10A50, 9000 Rockville Pike, Bethesda, MD 20892

NOTIFICATION PROCEDURE:

Write to the appropriate System Manager listed above to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individuals in the system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0128

SYSTEM NAME:

Clinical Research: Neural Prosthesis & Biomedical Engineering Studies, HHS/NIH/NINDS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Building, Room 9C02, 7550 Wisconsin Ave., Bethesda, Md 20892 and: (1) At hospitals and medical centers under contract, and (2) Federal Records Centers. A list of locations is available upon request from the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients and normal volunteers, males and females, participating in clinical studies to determine the feasibility of neural prostheses, and in clinical studies related to the development of instrumentation for diagnosis and treatment of neurological and sensory disorders conducted under contract for the National Institute of Neurological Disorders and Stroke (NINDS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Clinical research data as related to studies which seek to determine the feasibility of neural prostheses and to develop instrumentation for diagnosis and treatment of neurological and sensory disorders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 421, 289a, 289c.

PURPOSE(S):

(1) Clinical research on the development of neural prosthesis (artificial devices) to enhance function of individuals with various disorders of the central nervous system.

(2) Research on the development of new instruments to improve diagnosis and treatment of disorders of the nervous system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the

Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

1. *Authorized users:* Employees who maintain records in this system are instructed to grant access only to HHS scientists and their authorized collaborators.

2. *Physical safeguards:* Records are kept in a locked room when not in use.

3. *Procedural safeguards:* Personnel having access to this system are informed of Privacy Act requirements.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Fundamental Neurosciences Program, NINDS Federal Building, Room 916 7550 Wisconsin Ave Bethesda, MD 20892

NOTIFICATION PROCEDURE:

Write to: Chief, Administrative Services Branch, NINDS, Building 31, Room 8A49, 9000 Rockville Pike, Bethesda, MD 20892 and ask if a file with your name exists in the Neural Prosthesis or Biomedical Engineering Studies. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for

acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Write to system manager and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Patients, patients' families, hospital records and clinical investigators.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0134

SYSTEM NAME:

Clinical Research: Epidemiology and Clinical Studies, National Institute of Environmental Health Sciences, HHS/NIH/NIEHS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institute of Environmental Health Services (NIEHS), Epidemiology Branch, P. O. Box 12233, Research Triangle Park, North Carolina 27709, and at hospitals, medical schools, universities, research institutions, commercial organizations, state agencies, and collaborating government agencies. Inactive records may be stored in a Federal Records Center. A list of locations and contracts is available upon request made to the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adults and minors, both male and female, with known or suspected diseases, maladies, chemical or biological contaminations, as well as normal or non-suspect individuals and minors in control or study groups for

the purposes of comparison. Individuals included in this system of records normally have volunteered to participate in the study and voluntarily provided information for inclusion in the system.

The participants may be, but are not limited to, patients; workers subject to specific environments; individuals selected because of social, nutritional, physical, genetic and economic conditions and behavioral characteristics; and members of the general population subject to the variety of contaminants present in the environment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of records pertinent to an individual's current health status: Medical history; occupational history and work environments; and selected items of personal data such as smoking habits, family size, family medical history and domiciles. Examples of information which may be included in this system are name, Social Security Number, date of birth, weight, height, sex, race, medical history, blood type, laboratory results, examination findings, current and previous medications received, list of employers, descriptions of the work environment, substances or compounds routinely handled or exposed to, and a history of current and previous residences.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241.

PURPOSE(S):

National Institute of Environmental Health Sciences uses the data collected to:

1. Determine whether or not general conditions, chemicals and/or other substances found in the environment have effects on the health and well being of individuals or groups of individuals;
2. Determine how these conditions, chemicals or other substances, acting by themselves or in combination, produce adverse effects on health;
3. Identify individual or group characteristics that make a person susceptible to chemical contamination, disease or other adverse health effects from these environmental conditions or agents;
4. Determine whether there is a general or background level of exposure or other chemical effects in a local area, regional area, or nationally as well as within general or specific work environments;
5. Develop and/or validate epidemiologic or laboratory methods for

detecting adverse effects due to environmental exposures;

6. Determine the scientific basis for advising regulatory agencies such as the Environmental Protection Agency, the National Institute of Occupational Safety and Health and the Department of Labor's Occupational Safety and Health Administration regarding the adverse health effects of substances and conditions found in the environment;

7. Determine the scientific basis for advising local, state, other governmental agencies and international governments regarding the adverse health effects of substances and conditions found in the environment; and

8. Determine the scientific basis for advising the Congress, industry, workers, scientific or public agencies and other interested parties regarding the known or potential for adverse health effects from exposure to substances or conditions found in the environment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.
2. Disclosure may be made to a congressional office from the record of the individual in response to an inquiry from the congressional office, made at the request of the individual, and in the case of a minor, the minor's parent or legal guardian.
3. Referrals may be made of assignments of research investigators and project monitors to specific research projects to the Smithsonian Institution to contribute to the Smithsonian Science Information Exchange, Inc.
4. The Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.
5. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the

Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in one of a combination of the following mediums: File folders, data forms, punch card, magnetic tape discs, microfiche/microfilm, and computer tapes.

RETRIEVABILITY:

Information is retrieved by personal identifier such as name or code number. Social security numbers which are supplied on a voluntary basis also are used for retrieval.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. *Authorized users:* Use of these records is limited to those persons whose official duties require such access. Access to the information is controlled by the Project Officer or his representative at remote locations. Contractors or collaborating researchers, by formal agreement, comply with the provisions of the Privacy Act and Department regulations.
2. *Physical safeguards:* Hard copy data is maintained in locked file cabinets at the National Institute of Environmental Health Sciences or remote study locations. Information stored in computer systems is accessible only through proper sequencing of signal commands and access codes specifically assigned to the Project Officer or contractor in accordance with Departmental standards and National Bureau of Standards guidelines.
3. *Procedural safeguards:* Subjects directly participating in studies are advised that their identity is known only to those persons involved in conducting the study, and that any

published findings will be in a format which precludes individual identification.

The particular safeguards implemented at each site are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Epidemiology Branch, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, North Carolina 27709.

NOTIFICATION PROCEDURE:

Individuals may write to the System Manager to determine if a file exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. In writing, they should provide the following data:

- a. Complete name at the time of the study.
- b. Birth date.
- c. Home address at the time of the study.
- d. The facility where the examination was given or information otherwise collected.
- e. Date, or approximate dates when information was collected or an examination conducted.
- f. Name of study if known.
- g. A current name, address and telephone number where they can be reached.

An individual who requests notification of or access to a medical or dental record shall, at the time the

request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's description.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

The same information as outlined under notification procedures is needed for access to records. The request should be addressed to the System Manager. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the System Manager and specify the record and the information to be contested, and state the corrective action sought and the reasons for the correction. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

HHS agencies, institutions under contract to the U.S. Government, universities, medical schools, hospitals, commercial, institutions, labor and trade organizations, State agencies, international agencies, foreign governments, other U.S. Government agencies, patients and normal volunteers, physicians, researchers and other collaborating personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0143

SYSTEM NAME:

Biomedical Research: Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute of Allergy and Infectious Diseases, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

At National Institutes of Health facilities in Bethesda, Maryland, and at hospitals, medical schools, universities, research institutions, commercial organizations, state agencies, and collaborating Federal agencies. Inactive records may be retired to Federal

Records Centers. A list of locations is available upon request from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients with infectious diseases, immunologic diseases involving adverse reactions of the body (e.g., allergic reactions) and related diseases (e.g. Acquired Immunodeficiency Disease Syndrome/AIDS), normal healthy volunteers who serve as controls for comparison with patients, relatives of patients and other individuals whose characteristics or conditions are being studied for possible connections with the occurrence of the diseases under investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of clinical, medical, and epidemiological information resulting from or contained in direct observations, medical records and other histories, vital statistics reports, records on biological specimens (e.g., blood, urine, etc.), personal interviews, questionnaires, progress reports, correspondence or research findings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C 241, 289a, 289c.

PURPOSE(S):

This system will be used to support: (1) Epidemiologic, clinical and biometric investigations into the causes, nature (morbidity and mortality), outcome, therapy and cost of infectious, immunologic and related diseases; and (2) Review and evaluation of the progress of these research projects, and identification of and planning for improvements or for additional research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.
2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.
3. A record may be disclosed for a research purpose, when the Department (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the

research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

4. In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosures may be made to the Department of Justice for the purpose of obtaining its advice.

5. The Department contemplates that it may contract with one or more private firms for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records.

6. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen

because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

7. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, computer-accessible forms (e.g. tapes or discs), punched cards, bound notebooks, microfilm, charts, graphs, and X-rays.

RETRIEVABILITY:

Information is retrieved by name and/or participant identification number.

SAFEGUARDS:

1. *Authorized users:* Access to or disclosure of information is limited to collaborating researchers, contractors and NIAID employees who are involved in the conduct, support or review and evaluation of the research activities supported by this system.

2. *Physical safeguards:* Data are kept in secured areas (e.g. rooms which are locked when not in regular use, buildings with controlled access). Data stored in computer-accessible form is accessed through the use of key words known only to principal investigators or authorized personnel; all other information is stored in locked files.

3. *Procedural safeguards:* Contractors and collaborating researchers are required to comply with the provisions of the Privacy Act and with Department regulations.

These and other appropriate safeguards are implemented in each project in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13, and Part 6, "ADP Systems Security", of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Epidemiology and Biometry Branch, DMID, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3A24, Bethesda, Maryland 20892 and Special Assistant, Clinical Research Program, DAIDS, Room 2C-20, Solar Building, 6003 Executive Blvd., Bethesda, MD 20892

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: NIAID Privacy Act Coordinator, Solar Bldg., Room 3C-23, 6003 Executive Blvd., Bethesda, MD 20892, and provide the following information:

1. System name,
2. Complete name and home address at the time of the study,
3. Birth date,
4. Facility conducting study,
5. Disease type (if known),
6. Approximate dates of enrollment in the research study.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, other health professional, or other responsible individual, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants, from physicians, research investigators and other collaborating persons and from medical records and clinical research observations at hospitals, HHS agencies, universities, medical schools, research institutions, commercial institutions, state agencies, collaborating Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0145

SYSTEM NAME:

Clinical Research: Clinical Trials and Epidemiological Studies Dealing with Visual Disease and Disorders in the National Eye Institute, HHS/NIH/NEI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records included in this system are located in hospitals, universities, research centers, research foundations, and coordinating centers under contract with the National Eye Institute (NEI), and in NEI, National Institutes of Health, Building 10, 9000 Rockville Pike, Bethesda, Maryland 20892.

A current list of contractor sites is available by writing to the System Manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants in these studies include (1) individuals who have been or who are presently being treated by the NEI or its contractors for visual disorders or conditions of the eye, (2) individuals

who present physiological symptoms usually preceding or evidencing diseases or disorders of the eye, (3) offspring of previously studied populations, (4) populations at high-risk for development of certain eye disorders, such as age-related, and (5) normal volunteers who have agreed to provide control data germane to these studies. Studies are usually five years in duration and follow-up studies may occur in later years if information indicates they are appropriate.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of clinical, medical, and statistical information resulting from or contained in research findings, medical histories, vital statistics, personal interviews, questionnaires, or direct observation. The system also includes records of current addresses of study participants, photographs of structures of the eye, and correspondence from or about participants in these studies. Social security numbers, disclosed voluntarily, are included to assist in locating patients for follow-up studies, or verifying their existence through mortality registers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 301, 401, 405, 455, Public Health Service Act (42 U.S.C. 281, 284, 285i). These sections establish the National Eye Institute and authorize the conduct and support of vision research and related activities.

PURPOSE(S):

1. To monitor and evaluate incidence of visual disorders and/or diseases or the conditions under investigation and the relationship of various factors to the occurrence of these diseases.
2. To monitor the progression of various eye disorders and the efficacy of specific treatments of these disorders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.
2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to affect directly the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to

represent such employee, for example in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

3. Disclosure may be made to a private firm or a research institution for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. A record may be disclosed for a research purpose, when the Department (A) has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk, if any, to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Data may be stored in file folders, on magnetic tapes or discs, bound note books, and/or photographs.

RETRIEVABILITY:

Information is retrieved by a combination of a coded name and patient identification number.

SAFEGUARDS:

1. *Authorized users:* Employees who maintain records in the system are instructed to grant access to principal investigators and other treating physicians, clinic coordinators, and NEI employees whose duties require the use of such information. Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for each record maintained in each project.

2. *Physical safeguards:* Clinics are located in University Hospitals and the Clinical Center, NIH. These clinics are locked and records are kept in locked files with access by keys issued to principal investigators, appropriate physicians and coordinators. There is a security force at each center to avoid unauthorized entries. The computer records are accessed by passwords available only to principal investigators and authorized operators. Data is protected by enforcement of State laws applicable to fire and safety at each facility, as well as ADP Security and the Privacy Act regulations for each state.

3. *Procedural safeguards:* Routine visits are scheduled by the clinic coordinator who is authorized to access records. New records are generated each time a patient is seen by the physician and a copy of the form which is applicable to that visit is added to the patient's medical folder. (Documents forwarded to the data and reading centers do not bear individual identifiers) The folder is then returned to the locked file. Clinics are also locked when patients are not being seen, and medical staff is present when patients are in the clinic. If data is entered in computers as part of the hospital record, Privacy Act and hospital safeguards are enforced by access codes and passwords.

These practices are in compliance with the standards of Chapter 45-13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45-13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National

Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions. (Records at contractor sites are retained by the facility consonant with its institutional records retention schedule.)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Biometry and Epidemiology, National Eye Institute, 9000 Rockville Pike, Building 31, room 6A-52, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURE:

To determine if record exists, write to: NEI Privacy Act Coordinator, 9000 Rockville Pike, Building 31, room 6A-17, Bethesda, MD 20892.

The requestors must verify his/her identity by providing: A written certification that the requestor is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the act, subject to \$5,000 fine. An individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

- (1) Name, description of study
- (2) Location
- (3) Approximate date of participation

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures that have been made of their records, if any. An individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the Privacy Act Coordinator at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought and the reason(s) for requesting the correction, along with supporting justification to show how the record is inaccurate, incomplete, untimely, or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained by the principal investigator, treating physician, or clinic coordinator, directly from individual study participants, by interview to record certain pertinent historical facts, and by physical examination and photographs to record medical data.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

09-25-0156

SYSTEM NAME:

Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the Public Health Service, HHS/PHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is an umbrella system comprising separate sets of records located either in the organizations responsible for conducting evaluations or at the sites of programs or activities under evaluation. Locations include Public Health (PHS) facilities, or facilities of contractors of the PHS. Write to the appropriate System Manager below for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who provide information or opinions that are useful in evaluating programs or activities of the PHS, other persons who have participated in or benefitted from PHS programs or activities; or other persons included in evaluation studies for purposes of comparison. Such individuals may include (1) participants in research studies; (2) applicants for and recipients of grants, fellowships, traineeships or other awards; (3) employees, experts and consultants; (4) members of

advisory committees; (5) other researchers, health care professionals, or individuals who have or are at risk of developing diseases or conditions studied by PHS; (6) persons who provide feedback about the value or usefulness of information they receive about PHS programs, activities or research results; (7) persons who have received Doctorate level degrees from U.S. institutions; (8) persons who have worked or studied at U.S. institutions that receive(d) institutional support from PHS.

CATEGORIES OF RECORDS IN THE SYSTEM:

This umbrella system of records covers a varying number of separate sets of records used in different evaluation studies. The categories of records in each set depend on the type of program being evaluated and the specific purpose of the evaluation. In general, the records contain two types of information: (1) Information identifying subject individuals, and (2) information which enables PHS to evaluate its programs and services.

(1) Identifying information usually consists of a name and address, but it might also include a patient identification number, grant number, Social Security Number, or other identifying number as appropriate to the particular group included in an evaluation study.

(2) Information used for evaluation varies according to the program evaluated. Categories of evaluative information include personal data and medical data on participants in clinical and research programs; personal data, publications, professional achievements and career history of researchers; and opinions and other information received directly from individuals in evaluation surveys and studies of PHS programs.

The system does not include any master list, index or other central means of identifying all individuals whose records are included in the various sets of records covered by the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system comes from the authorities regarding the establishment of the National Institutes of Health, its general authority to conduct and fund research and to provide training assistance, and its general authority to maintain records in connection with these and its other functions (42 U.S.C. 203, 241, 2891-1 and 44 U.S.C. 3101), and Section 301 and 493 of the Public Health Service Act.

PURPOSE(S):

This system supports evaluation of the policies, programs, organization,

methods, materials, activities or services used by PHS in fulfilling its legislated mandate for (1) conduct and support of biomedical research into the causes, prevention and cure of diseases; (2) support for training of research investigators; (3) communication of biomedical information.

This system is not used to make any determination affecting the rights, benefits or privileges of any individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors and collaborating researchers, organizations, and State and local officials for the purpose of conducting evaluation studies or collecting, aggregating, processing or analyzing records used in evaluation studies. The recipients are required to protect the confidentiality of such records.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. The Department may disclose information from this system of records to the Department of Justice, to court or other tribunal, or to another party before such tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, bound notebooks, or computer-

accessible media (e.g., magnetic tapes or discs).

RETRIEVABILITY:

Information is retrieved by name and/or participant identification number within each evaluation study. There is no central collection of records in this system, and no central means of identifying individuals whose records are included in the separate sets of records that are maintained for particular evaluation studies.

SAFEGUARDS:

A variety of safeguards are implemented for the various sets of records in this system according to the sensitivity of the data each set contains. Information already in the public domain, such as titles and dates of publications, is not restricted. However, sensitive information, such as personal or medical history or individually identified opinions, is protected according to its level of sensitivity. Records derived from other systems of records will be safeguarded at a level at least as stringent as that required in the original systems. Minimal safeguards for the protection of information which is not available to the general public include the following:

1. *Authorized users:* Regular access to information in a given set of records is limited to PHS or to contractor employees who are conducting, reviewing or contributing to a specific evaluation study. Other access is granted only on a case-by-case basis, consistent with the restrictions required by the Privacy Act (e.g., when disclosure is required by the Freedom of Information Act), as authorized by the system manager or designated responsible official.

2. *Physical safeguards:* Records are stored in closed or locked containers, in areas which are not accessible to unauthorized users, and in facilities which are locked when not in use. Records collected in each evaluation project are maintained separately from those of other projects. Sensitive records are not left exposed to unauthorized persons at any time. Sensitive data in machine-readable form may be encrypted.

3. *Procedural safeguards:* Access to records is controlled by responsible employees and is granted only to authorized individuals whose identities are properly verified. Data stored in mainframe computers is accessed only through the use of keywords known only to authorized personnel. When personal computers are used, magnetic media (e.g. diskettes) are protected as under Physical Safeguards. When data

is stored within a personal computer (i.e., on a "hard disk"), the machine itself is treated as though it were a record, or records, under Physical Safeguards. Contracts for operation of this system of records require protection of the records in accordance with these safeguards; PHS project and contracting officers monitor contractor compliance.

These practices are in compliance with the standards of Chapter 45-13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45-13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 1100-C-2. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

See Appendix 1.

Policy coordination for this system is provided by: Director, Division of Planning and Evaluation, Office of Science Policy and Legislation, National Institutes of Health, Building 31, room 4B25, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the official of the organization responsible for the evaluation, as listed in Appendix 2. If you are not certain which component of PHS was responsible for the evaluation study, or if you believe there are records about you in several components of PHS, write to: NIH Privacy Act Coordinator, Building 31, room 3B07, 9000 Rockville Pike, Bethesda, MD 20892.

Requesters must provide the following information:

1. Full name, and name(s) used while studying or employed;
2. Name and location of the evaluation study or other PHS program in which the requester participated or the institution at which the requester was a student or employee, if applicable;
3. Approximate dates of participation, matriculation or employment, if applicable.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, other health professional, or other responsible individual, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants; from systems of records 09-25-0036, "Grants: IMPAC (Grants/Contract Information), HHS/NIH/DRG;" 09-25-0112, "Grants: Research, Research Training, Fellowship and Construction Applications and Awards, HHS/NIH/OD"; NSF-6, "Doctorate Record File", NSF-43", "Doctorate Work History File" (previously entitled "NSF-43, "Roster and Survey of Doctorate Holders

in The United States" and other records maintained by the operating programs of NIH; the National Academy of Sciences, professional associations such as the AAMC and ADA, and other contractors; grantees or collaborating researchers; or publicly available sources such as bibliographies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1: System Managers

National Institutes of Health, Office of the Director, Director, Division of Planning and Evaluation, Office of Science Policy and Legislation, Building 31, room 4B25, 9000 Rockville Pike, Bethesda, MD 20892.

National Institutes of Health, Office of the Director, Director, Division of Personnel Management, Building 1, room B1-60, 9000 Rockville Pike, Bethesda, MD 20892.

National Heart, Lung, and Blood Institute (NHLBI), NHLBI Minority Coordinator, Building 31, room 5A07, Bethesda, MD 20892.

National Library of Medicine (NLM), Assistant Director for Planning and Evaluation, Building 38, room 2S18, Bethesda, MD 20894.

National Eye Institute (NEI), Associate Director for Science Policy and Legislation, Building 31, room 6A25, Bethesda, MD 20892.

National Cancer Institute (NCI), Public Health Educator, OCC, NCI, National Institutes of Health Building 31, room 4B43, Bethesda, MD 20892.

National Institute on Aging (NIA), Chief, Office of Planning, Analysis, Technical Information and Evaluation, Federal Building, room 6A09, 7550 Wisconsin Avenue, Bethesda, MD 20892.

National Institute of Allergy and Infectious Diseases (NIAID), Chief, Evaluation and Reporting Section, Policy Analysis and Legislation Branch, Office of Administration Management, Building 31, room 7A-16, Bethesda, MD 20892.

National Institute of Child Health and Human Development (NICHD), Chief, Office of Science Policy and Analysis, Building 31, room 2A10, Bethesda, MD 20892.

National Institute on Deafness and Other Communication Disorders, Chief, Program Planning and Health Reports Branch, Building 31, room 3C35, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute of Dental Research (NIDR), Chief, Office of Planning Evaluation, and Communications, Building 31, room 2C36, Bethesda, MD 20892.

National Institute of Environmental Health Sciences (NIEHS) Program, Analyst, Office of Program Planning and Evaluation, P.O. Box 12233, Research Triangle Park, NC 27709.

National Institute of General Medical Sciences (NIGMS), Chief, Office of Program Analysis, Westwood Building, room 934, 5333 Westbard Avenue, Bethesda, MD 20892.

Fogarty International Center (FIC), National Institutes of Health, Assistant Director for Planning, Evaluation and Public Affairs, Building 31, room B2C32, Bethesda, MD 20892.

Division of Research Grants (DRG), Assistant Director for Special Projects, Westwood Building, room 457, 5333 Westbard Avenue, Bethesda, MD 20892.

National Center for Research Resources (NCRR), Evaluation Officer, Office of Science Policy, Westwood Building, room 8A03, Bethesda, MD 20892.

National Institute of Nursing Research (NINR), Chief, Office of Planning, Analysis and Evaluation, Building 31, room 5B09, Bethesda, MD 20892.

Office of Research Integrity, Policy Analyst, Division of Policy and Education, U.S. Public Health Service, 5515 Security Lane, suite 700, Rockwall-II Building, Rockville, MD 20852.

Appendix 2: Notification and Access Officials

NIH, Office of the Director, Associate Director for Science, Policy and Legislation, Building 1, room 137, 9000 Rockville Pike, Bethesda, MD 20892.

National Institutes of Health, Office of the Director, Director, Division of Personnel Management, Building 1, room B1-60, 9000 Rockville Pike, Bethesda, MD 20892.

National Heart, Lung, and Blood Institute (NHLBI), Privacy Act Coordinator, Building 31, room 5A29, Bethesda, MD 20892.

National Library of Medicine (NLM), Assistant Director for Planning and Evaluation, Building 38, room 2S18, Bethesda, MD 20894.

National Eye Institute (NEI), Executive Officer, Building 31, room 6A25, Bethesda, MD 20892.

Fogarty International Center (FIC), National Institutes of Health, Assistant Director for Planning, Evaluation and Public Affairs, Building 31, room B2C32, Bethesda, MD 20892.

Division of Research Grants (DRG), Assistant Director for Special Projects, Westwood Building, room 457, 5333 Westbard Avenue, Bethesda, MD 20892.

National Center for Research Resources (NCRR), Evaluation Officer, Office of Science Policy, NIH, Westwood Building, room 8A03, Bethesda, MD 20892.

National Cancer Institute, Privacy Act Coordinator, National Institutes of Health, Building 31, room 10A30, Bethesda, MD 20892.

09-25-0158

SYSTEM NAME:

Administration: Records of Applicants and Awardees of the NIH Intramural Research Training Awards Program, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system is located in each of the intramural offices and laboratories where the Intramural Research Training Awards (IRTA) Fellow is located and assigned, including the respective Scientific Director's office, the administrative and personnel offices,

and in Division of Personnel Management branches responsible for administering the IRTA Program, and Office of Education, Building 10, room 1C125, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for IRTA Fellowships, current IRTA Fellows, and former IRTA Fellows.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to education and training, employment history, scientific publications; research goals; letters of reference; and personal information such as name, date of birth, Social Security number, home address and citizenship; and information related to fellowship awards such as stipend levels, training assignments, training expenses and travel allowances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 284(b)(1)(C), 286b-3, and 287c-1 authorizes PHS to make awards for biomedical research and research training.

PURPOSE(S):

Records in this system are used to determine individuals' eligibility and evaluate their qualifications for IRTA Fellowships; to document the basis for management actions relating to Fellowships that are awarded; and to provide data for program evaluation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to the Office of Personnel Management for evaluation of NIH Personnel programs.
2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the written request of that individual.
3. Disclosure may be made to the Department of Justice or to a court or other tribunal from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice,

court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. Disclosure may be made to a Federal, State or local agency maintaining civil, criminal or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the selection or retention of a fellow.

5. Disclosure may be made to a Federal agency, in response to its request, in connection with hiring or retention of an employee, the issuance of a security clearance, an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, and on magnetic tapes and disks.

RETRIEVABILITY:

Records are retrieved by name, Social Security number, or institute list number.

SAFEGUARDS:

1. *Authorized Users:* Access is granted only to NIH scientists, administrative office staff, personnel staff and financial management staff directly involved in the administration of the IRTA Program.

2. *Physical Safeguards:* File folders are kept in locked drawers or locked rooms when system personnel are not present.

3. *Procedural safeguards:* Access to file folders is controlled by system personnel. Records may be removed from the files only with the approval of the system manager or other authorized employees. Data stored in the automated system is accessed through the use of keywords known only to authorized personnel.

These practices are in compliance with the standards of Chapter 45-13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45-13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology

Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 4000-E-3. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel/Administrative Officers of the National Institutes of Health Institutes/Centers/Divisions. Contact the individual listed under Notification Procedure for the name and address of the appropriate System Manager.

NOTIFICATION PROCEDURE:

To determine if a record exists and where it is located, contact: Chief, Staffing Management Branch, Division of Personnel Management, NIH, Building 31, Room 1C31, 9000 Rockville Pike, Bethesda, MD 20892. The requestor must also verify his or her identity by providing either a notarization of the request or a written certification that the requestor is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORDS ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under the notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is untimely, incomplete, irrelevant or inaccurate. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Applicants, persons and institutions supplying references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0161

SYSTEM NAME:

Administration: NIH Consultant File, HHS/NIH/DRG.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is an umbrella system comprising separate sets of records located in each of the NIH organizational components or facilities of contractors of the NIH.

Division of Computer Research and Technology, Data Management Branch, Building 12A, room 4041B, National Institutes of Health, Bethesda, Maryland 20892.

Write to the appropriate system manager listed in Appendix I for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consultants who provide the evaluation of extramural grants and cooperative agreement applications and research contract proposals, including the NIH Reviewers' Reserve and/or advise on policy. Consultants who participate in NIH conferences, workshops, evaluation projects and/or provide technical assistance at site locations arranged by contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, Social Security numbers, resumes, curriculum vitae (C.V.s), areas of expertise, gender, minority status, business status, AREA-eligible status, publications, travel records, and payment records for consultants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 301 of the Public Health Service Act, describing the general powers and duties of the Public Health Service relating to research and investigation, and section 402 of the Public Health Service Act, describing the appointment and authority of the Director of the National Institutes of Health, (42 U.S.C. 241, 282 and 290aa).

PURPOSE(S):

This umbrella system comprises separate sets of records located in each of the NIH organizational components or facilities of contractors of the NIH. These records are used: (1) To identify and select experts and consultants for program reviews and evaluations; (2) To identify and select experts and consultants for the review of special grant and cooperative agreement applications and research contract proposals and (3) To obtain and pay

consultants who participate in NIH conferences, workshops, evaluation projects and/or provide technical assistance at site locations arranged by contractors, and (4) To provide necessary reports related to payment to the Internal Revenue Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made to the Department of Justice or to a court or other tribunal from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. Disclosure may be made to contractors to process or refine the records. Contracted services may include transcription, collation, computer input, and other records processing.

4. Information in this system of records is used routinely to prepare W-2 and 1099 Forms to submit to the Internal Revenue Service and applicable State and local governments those items to be included as income to an individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ASSESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, computer tapes and disks, microfiche, and microfilm.

RETRIEVABILITY:

Records are retrieved by name, expertise, gender, minority status, business status, AREA-eligible status and experimental system used.

SAFEGUARDS:

1. Authorized users: Data on computer files is accessed by keyword known.

only to authorized users who are PHS or contractor employees involved in managing a review or program advisory committee, conducting a review of extramural grant applications, cooperative agreement applications, or research contract proposals, performing an evaluation study or managing the consultant file. Access to information is thus limited to those with a need to know.

2. *Physical safeguards:* Rooms where records are stored are locked when not in use. During regular business hours rooms are unlocked but are controlled by on-site personnel.

3. *Procedural safeguards:* Names and other identifying particulars are deleted when data from original records are encoded for analysis. Data stored in computers is accessed through the use of keywords known only to authorized users. Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act.

This system of records will be protected according to the standards of Chapter 45-13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45-13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 1100-G. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

The policy coordinator for this system is also the system manager listed for the Division of Research Grants.

Chief, Biological Sciences Review Section, Referral and Review Branch, Division of Research Grants, Westwood Building, room 417, 5333 Westbard Avenue, Bethesda, Maryland 20892, and See Appendix I

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate system manager as listed in Appendix I.

The requestor must also verify his or her identity by providing either a

notarization of the request or a written certification that the requestor is whom he or she claims to be. The request should include: (a) Full name, and (b) appropriate dates of participation.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, reasonably identify the record, specify the information to be contested, and state the corrective action sought with supporting information. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I: System Managers

Office of the Director (OD), Extramural Programs Management Officer, Building 1, room 328, Bethesda, MD 20892.

National Center for Research Resources (NCRR), Director, Office of Review, Westwood Building, room 8A16, Bethesda, MD 20892.

National Cancer Institute (NCI), Chief, Review Logistics Branch, Executive Plaza North, room 636, Bethesda, MD 20892.

National Eye Institute (NEI), Review and Special Projects Officer, Executive Plaza South, room 350, Bethesda, MD 20892.

National Heart, Lung, and Blood Institute (NHLBI), Associate Director for Review, Westwood Building, room 557A, Bethesda, MD 20892.

National Institute on Aging (NIA), Chief, Scientific Review Office, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

National Institute of Allergy and Infectious Diseases (NIAID), Director, Scientific Review Program, Division of Extramural Activities, Solar Bldg., room 3C-16, 6003 Executive Blvd., Bethesda, MD 20892.

National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), Chief, Grants Review Branch, Westwood Building, room 406, Bethesda, MD 20892.

National Institute of Child Health and Human Development (NICHD), Director, Division of Scientific Review, 6100 Executive Boulevard, room 5E03H, Bethesda, MD 20892.

National Institute on Deafness and Other Communication Disorders (NIDCD), Chief, Scientific Review Branch, Executive Plaza South, room 400B, 620 Executive Boulevard, Rockville, MD 20852.

National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), Chief, Review

Branch, Westwood Building, room 603, Bethesda, MD 20892.

National Institute of Dental Research (NIDR), Chief, Scientific Review Section, POB, Westwood Building, room 519, Bethesda, MD 20892.

National Institute of Environmental Health Sciences (NIEHS), Deputy Director, Division of Extramural Research and Training, P.O. Box 12233, Research Triangle Park, NC 27709.

National Institute of General Medical Sciences (NICMS), Chief, Office of Review Activities, Westwood Building, room 9A18, Bethesda, MD 20892.

National Institute of Neurological Disorders and Stroke (NINDS), Chief, Scientific Review Branch, Federal Building, room 9C10A, Bethesda, MD 20892.

National Institute of Nursing Research (NINR), Chief, Office of Review, Westwood Building, room 740, Bethesda, MD 20892.

National Library of Medicine (NLM), Chief, Biomedical Information Support Branch, Building 38A, room 5S522, Bethesda, MD 20894.

National Center for Human Genome Research (NCHGR), Chief, Office of Scientific Review, Building 38A, room 606, Bethesda, MD 20892.

National Institute of Mental Health, Contract Officer, Contracts Management Branch, ORM, Parklawn Building, room 7C18, 5600 Fishers Lane, Rockville, MD 20857.

National Institute on Alcohol Abuse and Alcoholism, Contract Officer, Contracts Management Branch, OPRM, Parklawn Building, room 14C06, 5600 Fishers Lane, Rockville, MD 20857.

09-25-0165

SYSTEM NAME:

National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of AIDS Research (OAR), National Institutes of Health, Federal Building, room 102, 7550 Wisconsin Avenue, Bethesda, Maryland 20892 and Division of Computer Research and Technology (DCRT), National Institutes of Health, Building 12A, room 4037, 9000 Rockville Pike, Bethesda, Maryland 20892 and

Operations Accounting Branch, Division of Financial Management (DFM), National Institutes of Health, Building 31, room B1B55, 9000 Rockville Pike, Bethesda, Maryland 20892.

See Appendix I for a listing of other NIH offices responsible for administration of the AIDS Research Loan Repayment Program. Write to the System Manager at the address below for the address of any Federal Records

Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for, who have been approved to receive, who are receiving, and who have received funds under the NIH AIDS Research LRP; and individuals who are interested in participation in the NIH AIDS Research LRP.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, Social Security number; service pay-back obligations, standard school budgets, educational loan data including deferment and repayment/delinquent/default status information; employment data; professional and credentialing history of licensed health professionals including schools of attendance; personal, professional, and demographic background information; employment status verification (which includes certifications and verifications of continuing participation in AIDS research); Federal, State and local tax information, including copies of tax returns.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 487A (42 U.S.C. 288-1) of the PHS Act, as amended, directing the NIH to establish and implement a program of educational loan repayment for qualified health professionals who agree to conduct, as employees of NIH, AIDS research. The provisions of section 338B of the PHS Act (42 U.S.C. 2541-1), as amended, governing the NHSC loan repayment program, are incorporated except as inconsistent. The Internal Revenue Code at 26 U.S.C. 6109 requires the provision of the SSN for the receipt of loan repayment funds under the NIH AIDS Research LRP.

PURPOSE(S):

(1) To identify and select applicants for the NIH AIDS Research LRP; (2) To monitor loan repayment activities, such as payment tracking, deferment of service obligation, and default; and (3) To assist NIH officials in the collection of overdue debts owed under the NIH AIDS Research LRP. Records may be transferred to system No. 09-15-0045, "Health Resources and Services Administration Loan Repayment/Debt Management Records System, HHS/HRSA/OA," for debt collection purposes when NIH officials are unable to collect overdue debts owed under the NIH AIDS Research LRP.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made to the Department of Justice or to a court or other tribunal from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States of any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

4. NIH may disclose records to Department contractors and subcontractors for the purpose of collecting, compiling, aggregating, analyzing, or refining records in the system. Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

5. NIH may disclose information from this system of records to private parties such as present and former employers, references listed on applications and associated forms, other references and educational institutions. The purpose of such disclosures is to evaluate an individual's professional accomplishments, performance, and educational background, and to determine if an applicant is suitable for

participation in the NIH AIDS Research LRP.

6. NIH may disclose information from this system of records to a consumer reporting agency (credit bureau) to obtain a commercial credit report to assess and verify the ability of an individual to repay debts owed to the Federal Government. Disclosures are limited to the individual's name, address, Social Security number and other information necessary to identify him/her; the funding being sought or amount and status of the debt; and the program under which the applicant or claim is being processed.

7. NIH may disclose from this system of records a delinquent debtor's or a defaulting participant's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose, as follows:

a. To another Federal agency so that agency can effect a salary offset for debts owed by Federal employees; if the claim arose under the Social Security Act, the employee must have agreed in writing to the salary offset.

b. To another Federal agency so that agency can effect an unauthorized administrative offset; i.e., withhold money, other than federal salaries, payable to or held on behalf of the individual.

c. To the Treasury Department, Internal Revenue Service (IRS), to request an individual's current mailing address to locate him/her for purposes of either collecting or compromising a debt, or to have a commercial credit report prepared.

8. NIH may disclose information from this system of records to another agency that has asked the Department to effect a salary or administrative offset to help collect a debt owed to the United States. Disclosure is limited to the individual's name, address, Social Security number, and other information necessary to identify the individual to information about the money payable to or held for the individual, and other information concerning the offset.

9. NIH may disclose to the Treasury Department, Internal Revenue Service (IRS), information about an individual applying for loan repayment under any loan repayment program authorized by the Public Health Service Act to find out whether the applicant has a delinquent tax account. This disclosure is for the sole purpose of determining the applicant's creditworthiness and is limited to the individual's name, address, Social Security number, other information necessary to identify him/

her, and the program for which the information is being obtained.

10. NIH may report to the Treasury Department, Internal Revenue Service (IRS), as taxable income, the written-off amount of a debt owed by an individual to the Federal Government when a debt becomes partly or wholly uncollectible, either because the time period for collection under the statute of limitations has expired, or because the Government agrees with the individual to forgive or compromise the debt.

11. NIH may disclose to debt collection agents, other Federal agencies, and other third parties who are authorized to collect a Federal debt, information necessary to identify a delinquent debtor or a defaulting participant. Disclosure will be limited to the individual's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose.

12. NIH may disclose information from this system of records to any third party that may have information about a delinquent debtor's or a defaulting participant's current address, such as a U.S. post office, a State motor vehicle administration, a professional organization, an alumni association, etc., for the purpose of obtaining the individual's current address. This disclosure will be strictly limited to information necessary to identify the individual, without any reference to the reason for the agency's need for obtaining the current address.

13. NIH may disclose information from this system of records to other Federal agencies that also provide loan repayment at the request of these Federal agencies in conjunction with a matching program conducted by these Federal agencies to detect or curtail fraud and abuse in Federal loan repayment programs, and to collect delinquent loans or benefit payments owed to the Federal Government.

14. NIH may disclose from this system of records to the Department of Treasury, Internal Revenue Service (IRS): (1) A delinquent debtor's or a defaulting participant's name, address, Social Security number, and other information necessary to identify the individual; (2) the amount of the debt; and (3) the program under which the debt arose, so that IRS can offset against the debt any income tax refunds which may be due to the individual.

15. NIH may disclose information provided by a lender to other Federal agencies, debt collection agents, and other third parties who are authorized to collect a Federal debt. The purpose of

this disclosure is to identify an individual who is delinquent in loan or benefit payments owed to the Federal Government.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purposes of these disclosures are: (1) To provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records, and (2) to enable NIH to improve the quality of loan repayment decisions by taking into account the financial reliability of applicants, including obtaining a commercial credit report to assess and verify the ability of an individual to repay debts owed to the Federal Government. Disclosure of records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE: Records are maintained in file folders, computer tape, discs, and file cards.

RETRIEVABILITY: Records are retrieved by name, Social Security number, or other identifying numbers.

SAFEGUARDS:

1. *Authorized users:* Data on computer files is accessed by keyword known only to authorized users who are NIH employees responsible for implementing the NIH AIDS Research LRP. Access to information is thus limited to those with a need to know.

2. *Physical safeguards:* Rooms where records are stored are locked when not in use. During regular business hours rooms are unlocked but are controlled by on-site personnel. Security guards perform random checks on the physical security of the data.

3. *Procedural and technical safeguards:* A password is required to access the terminal and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs (see Authorized Users, above) protect information from public view and from unauthorized personnel entering an unsupervised office.

These practices are in compliance with the standards of Chapter 45-13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45-13, the Department's Automated Information System Security Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 2300-537-1. Participant case files are transferred to a Federal Records Center one year after closeout and destroyed five years later. Closeout is the process by which it is determined that all applicable administrative actions and loan repayments have been completed by the LRP and service obligations have been completed by the participant. Applicant case files are destroyed three years after disapproval or withdrawal of their application. Official appeal and litigation case files are destroyed six years after the calendar year in which the case is closed. Other copies of these files are destroyed two years after the calendar year in which the case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, NIH AIDS Research Loan Repayment Program, Office of AIDS Research, National Institutes of Health, Federal Building, room 102, 7550 Wisconsin Avenue, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be. The request should include: (a) Full name, and (b) appropriate dates of participation. The requester must also understand that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. Requesters appearing in person must provide a valid driver's license or passport, including photo, and at least one other form of identification.

RECORD ACCESS PROCEDURES:

Write to the System Manager specified above to attain access to records and provide the same information as is required under the Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual; participating lending institutions; educational institutions attended; other Federal agencies; consumer reporting agencies/ credit bureaus; and third parties that provide references concerning the subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I: System Locations

Office of AIDS Research, National Institutes of Health, Building 31, room 5C12, 9000 Rockville Pike, Bethesda, Maryland 20892.

Division of Computer Research and Technology, National Institutes of Health, Building 12A, room 4037, 9000 Rockville Pike, Bethesda, Maryland 20892.

Operations Accounting Branch, Division of Financial Management, National Institutes of Health, Building 31, room B1B55, 9000 Rockville Pike, Bethesda, Maryland 20892.

Division of Cancer Treatment, National Cancer Institute, National Institutes of Health, Building 31, room 3A44, 9000 Rockville Pike, Bethesda, MD 20892.

Division of Cancer Etiology, National Cancer Institute, National Institutes of Health, Building 41, room A208, 9000 Rockville Pike, Bethesda, MD 20892.

Division of Cancer Biology, Diagnosis, and Centers, National Cancer Institute, National Institutes of Health, Building 31, room 3A05, 9000 Rockville Pike, Bethesda, MD 20892.

National Heart, Lung, and Blood Institute, National Institutes of Health, Building 10, room 7N218, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute of Dental Research, National Institutes of Health, Building 31, room 2C23, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of

Health, Building 10, room 9N222, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute of Neurological Disorders and Stroke, National Institutes of Health, Building 10, room 5N220, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute of Allergy and Infectious Diseases, National Institutes of Health, Building 31, room 7A05, 9000 Rockville Pike, Bethesda, MD 20892.

Pharmacological Sciences Program, National Institute of General Medical Sciences, National Institutes of Health, 5333 Westbard Avenue, room 919, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute of Child Health and Human Development, National Institutes of Health, Building 31, room 2A25, 9000 Rockville Pike, Bethesda, MD 20892.

National Eye Institute, National Institutes of Health, Building 10, room 10N202, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, NC 27709.

Gerontology Research Center, National Institute on Aging, National Institutes of Health, 4940 Eastern Avenue, Baltimore, MD 21224.

National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, room 4C13, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute of Deafness and Communication Disorders, National Institutes of Health, Building 31, room 3C02, 9000 Rockville Pike, Bethesda, MD 20892.

National Center for Research Resources, National Institutes of Health, Building 31, room 3B36, 9000 Rockville Pike, Bethesda, MD 20892.

National Center for Nursing Research, National Institutes of Health, Building 31, room 5B06, 9000 Rockville Pike, Bethesda, MD 20892.

Critical Care Medicine Department, Clinical Center, National Institutes of Health, Building 10, room 7D43, 9000 Rockville Pike, Bethesda, MD 20892.

National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Parklawn Building, room 16C05, 5600 Fishers Lane, Rockville, MD 20857.

National Institute on Drug Abuse, National Institutes of Health, Parklawn Building, room 10A38, 5600 Fishers Lane, Rockville, MD 20857.

National Institute of Mental Health, National Institutes of Health, Parklawn Building, room 1599, 5600 Fishers Lane, Rockville, MD 20857.

09-25-0170

SYSTEM NAME:

Diabetes Clinical Data System, HHS/NIH/NIDDK.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Diabetes Clinical Trials Program Office, Division of Diabetes, Endocrinology and Metabolic Diseases,

National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Westwood Building, room 628, Bethesda, Maryland 20892.

DCCT Data Coordinating Center. (Contractor), Biostatistics Center, George Washington University, 6110 Executive Boulevard, suite 750, Rockville, MD 20852.

DCCT Central Biochemistry Laboratory (Subcontractor), University of Minnesota Hospital and Clinic, Box 198, Harvard Street at East River Road, Minneapolis, Minnesota 55455-9980.

A list of all contractor/subcontractor locations is available upon request from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who participated in the Diabetes Control and Complications Trial (DCCT) and are continuing in follow-up studies and family members of these participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Participant names, addresses, phone numbers; Social Security numbers (voluntary), phone numbers, driver's license numbers, employer information, spouse names, study identification numbers, names of medical provider, medical record identification numbers, health and medical record data collected during the DCCT and follow-up studies; the names, addresses and phone numbers of acquaintances and relatives to assist in follow-up; and information pertaining to DCCT stored biologic specimens (including blood, urine and genetic materials).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 301(a) of the Public Health Service (PHS) Act (42 U.S.C. 241(a)), describing the general powers and duties of the Public Health Service relating to research and investigation, and section 426 of the PHS Act (42 U.S.C. 285c) describing the purpose of the National Institute of Diabetes and Digestive and Kidney Diseases to conduct research with respect to, among other areas, diabetes mellitus.

PURPOSE(S):

These records are used to: (1) Conduct follow-up studies (projected follow-up of 7-10 years) on the morbidity and mortality experiences of DCCT participants; and (2) provide relevant demographic, health and medical record data on DCCT participants to biomedical researchers authorized to use DCCT information and stored biologic materials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to affect directly the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service, based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

3. NIH may disclose records to Department contractors and subcontractors for the purpose of collecting, compiling, aggregating, analyzing, or refining records in the system. Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

4. A record may be disclosed for a research purpose, when the Department: (A) has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health

nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

5. Information from this system may be disclosed to Federal agencies, State agencies (including the Motor Vehicle Administration and State vital statistics offices, private agencies, and other third parties (such as current or prior employers, acquaintances, relatives), in order to obtain information on morbidity and mortality experiences and to locate individuals for the follow-up studies. Social Security numbers may be disclosed: (1) To the National Center for Health Statistics to ascertain vital status through the National Death Index; (2) to the Health Care Financing Agency to ascertain morbidities; and (3) to the Social Security Administration to ascertain disabilities and/or location of participants. Social Security numbers may also be given to other Federal agencies, and State and local agencies for purposes of locating individuals for participation in follow-up studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders and computer tapes and diskettes, microfiche, and file cards.

RETRIEVABILITY:

Records are retrieved by name, Social Security number, or other identifying numbers, keywords, and parameters of individual patient health or medical record data.

SAFEGUARDS:

1. *Authorized users:* Data on computer files is accessed by keyword known only to authorized users who are NIH or contractor employees who have a need for the data in performance of their duties as determined by the system manager. Researchers authorized to conduct research on biologic specimens will have access to the system through the use of encrypted identifiers

sufficient to link individuals with records in such a manner that does not compromise confidentiality of the individual. Access to information is thus limited to those with a need to know.

2. *Physical safeguards:* Records and data tapes are stored in locked files in secured areas with restricted access. During regular business hours rooms are unlocked but are controlled by on-site personnel. Terminal access is controlled by user ID and keywords; off-site data backup is maintained in a separate building; fire protection is maintained by an on-site fire extinguisher system and fire alarm system present in the computer room.

3. *Procedural and technical safeguards:* Names and other identifying particulars are deleted when data from original records are encoded for analysis. Data stored in computers is accessed through the use of keywords known only to authorized users. A password is required to access the terminal and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs (see Authorized Users, above) protect information from public view and from unauthorized personnel entering an unsupervised office. Contractors and subcontractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the System Manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts and in agreements with grantees or collaborators participating in research activities supported by this system. HHS project directors, contract officers, and project officers oversee compliance with these requirements.

These practices are in compliance with the standards of Chapter 45-13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45-13, and the Department's Automated Information System Security Program Handbook; and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 3000-G-3(b), which allows records to be kept as long

as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGERS AND ADDRESS:

Director, Diabetes Clinical Trials Program, DPB, Division of Diabetes, Endocrinology and Metabolic Diseases, NIDDK, National Institutes of Health, Westwood Building, Room 628, 5333 Westbard Avenue, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. The request should include: (a) Full name, and (b) appropriate dates of participation.

Individuals who request notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's/incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify their relationship to the child/incompetent person as well as his/her own identity.

RECORD ACCESS PROCEDURES:

Write to the System Manager specified above to attain access to records and provide the same information as is required under the Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or

irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual; patient health and medical record data; data generated from the DCCT; Federal, State and local agencies (including the Social Security Administration), and if the person is deceased, from the National Death Index, and/or family members and other knowledgeable third persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0205

SYSTEM NAME:

Alcohol, Drug Abuse, and Mental Health Epidemiologic and Biometric Research Data, HHS/NIH/NIAAA, HHS/NIH/NIDA and HHS/NIH/NIMH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located at the research facilities which collect or provide research data for this system under contract to the agency. Contractors may include, but are not limited to, research centers, clinics, hospitals, universities, research foundations, national associations, and coordinating centers. Records may also be located at the research facilities of the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the National Institute on Drug Abuse (NIDA); and the National Institute of Mental Health (NIMH). A current list of sites is available by writing to the appropriate System Manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the subjects of research in epidemiologic, clinical, methodologic, and longitudinal research studies and surveys of mental health and alcohol and drug use/abuse and mental, alcohol, and/or drug abuse disorders. These individuals are selected as representative of the general adult and/or child population or of special groups. Special groups include, but are not limited to, normal individuals serving as controls; clients referred for or receiving medical, mental health, and alcohol and/or drug abuse related treatment and prevention services; providers of services; demographic sub-groups as applicable, such as age, sex, ethnicity, race, occupation, geographic location; and

groups exposed to hypothesized risks, such as relatives of individuals who have experienced mental health and/or alcohol, and/or drug abuse disorders, life stresses, or have previous history of mental, alcohol, and/or drug abuse related illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains data about the individual as relevant to a particular research study. Examples include, but are not limited to, items about the health/mental health and/or alcohol or drug consumption patterns of the individual; demographic data; social security numbers (voluntary); past and present life experiences; personality characteristics; social functioning; utilization of health/mental health, alcohol, and/or drug abuse services; family history; physiological measures; and characteristics and activities of health/mental health; alcohol abuse, and/or drug abuse care providers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, sections 301 and 405 (42 U.S.C. 241, and 284, General Research and Investigation Authorities); Public Health Service Act, sections 301, 302, 303 and title V, parts A and B (42 U.S.C. 241, 242, 242(a)).

PURPOSE(S):

The purpose of the system of records is to collect and maintain databases for research activities. Analyses of these data involve groups of individuals with given characteristics and do not refer to special individuals. The generation of information and statistical analyses will ultimately lead to a better description and understanding of mental, alcohol, and/or drug abuse disorders, their diagnosis, treatment and prevention, and the promotion of good physical and mental health.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record may be disclosed for a research purpose, when the Department: (a) As determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; e.g., disclosure of alcohol or drug abuse patient records will be made only in accordance with the restrictions of confidentiality statutes and regulations 42 U.S.C. 290 (dd-3), 42 U.S.C. 241 and 405, 42 CFR part 2, and where applicable, no disclosures will be made inconsistent with an authorization of confidentiality under 42 U.S.C. 242a and 42 CFR part 2a; (b) as determined that the research purpose (1) cannot be reasonably accomplished unless the

record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (c) has required the recipient to— (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; and (d) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by, these provisions.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from a congressional office made at the written request of that individual.

3. In the event of litigation, where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee; the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected (e.g., disclosure may be made to the Department of Justice or other appropriate Federal agencies in defending claims against the United States when the claim is based upon an individual's mental or physical condition and is alleged to have arisen

because of the individual's participation in activities of a Federal Government supported research project).

4. The Department contemplates that it will contract with a private firm for the purpose of collecting, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on index cards, file folders, computer tapes and disks, microfiche, microfilm, and audio and video tapes. Normally, the factual data, with study code numbers, are stored on computer tape or disk, while the key to personal identifiers is stored separately, without factual data, in paper files.

RETRIEVABILITY:

During data collection stages and followup, if any, retrieval by personal identifier (e.g., name, social security number) (in some studies), or medical record number, is necessary. During the data analysis stage, data are normally retrieved by the variables of interest (e.g., diagnosis, age, occupation).

SAFEGUARDS:

1. *Authorized users:* Access to identifiers and to link files is strictly limited to the authorized personnel whose duties require such access. Procedures for determining authorized access to identified data are established as appropriate for each location. Personnel, including contractor personnel, who may be so authorized include those directly involved in data collection and in the design of research studies, e.g., interviewers and interviewer supervisors; project managers; statisticians involved in designing sampling plans.

2. *Physical safeguards:* Records are stored in locked rooms, locked file cabinets, and/or secured computer facilities. Personal identifiers and link files are separated as much as possible and stored in locked files. Computer data access is limited through the use of key words known only to authorized personnel.

3. *Procedural safeguards:* Collection and maintenance of data is consistent with legislation and regulations in the protection of human subjects, informed consent, confidentiality, and confidentiality specific to drug and alcohol abuse patients where these apply. When an Institute Division or a

contractor provides anonymous data to research scientists for analysis, study numbers which can be matched to personal identifiers will be eliminated, scrambled, or replaced by the agency or contractor with random numbers which cannot be matched. Contractors who maintain records in this system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and research activities related to this system. The HHS project directors, contract officers, and project officers oversee compliance with these requirements.

4. *Implementation guidelines:* DHHS Chapter 45- and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual and Part 6, "ADP System Security" of the HHS ADP Systems Security Manual.

RETENTION AND DISPOSAL:

Personal identifiers are retained only as long as they are needed for the purposes of the current research project, and for followup studies generated by the present study. Removal or disposal of identifiers is done according to the storage medium (e.g., erase computer tape, shred or burn index cards, etc.). A staff person designated by the System Manager will oversee and will describe and confirm the disposal in writing.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Coordinator, National Institute of Mental Health, Room 15-81, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Deputy Director, Division of Biometry and Epidemiology, National Institute on Alcohol Abuse and Alcoholism, Room 14C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Deputy Director, Division of Clinical and Prevention Research, National Institute on Alcohol Abuse and Alcoholism, Room 14C-10, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Privacy Act Coordinator, National Institute on Drug Abuse, Room 10A-42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate System Manager at the address above. Provide individual's name; current address; date of birth; date, place and nature of participation in specific research study; name of individual or organization administering the research study (if known); name or description of the research study (if known); address at the

time of participation; and a notarized statement by two witnesses attesting to the individual's identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

An individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

CONTESTING RECORD PROCEDURE:

Contact the appropriate official at the address specified under System Manager(s) above and reasonably identify the record, specify the information being contested, and state corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

The system contains information obtained directly from the subject individual by interview (face-to-face or telephone), by written questionnaire, or by other tests, recording devices or observations, consistent with legislation and regulation regarding informed consent and protection of human subjects. Information is also obtained from other sources, such as health, mental health, alcohol, and/or drug abuse care providers; relatives; guardians; and clinical medical research records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0207

SYSTEM NAME:

Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse, HHS/NIH/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

University of California, San Francisco, Langley Porter Psychiatric Institute, San Francisco, California 94143.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Normal, healthy adults who voluntarily participate in studies on the pharmacokinetics of psychoactive drugs at Langley Porter Psychiatric Institute, during the period September 1987 through September 1993.

CATEGORIES OF RECORDS IN THE SYSTEM:

Research records on each subject-participant contain the following information: Name; clinician's records including medical history, laboratory test results, physical examinations, psychological profile, and drug use profile; drug study data including records of drugs administered, exposures to radioactivity, and drug reactions; and date of study in which the subject participated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, sections 301(a), 503 and 405 (42 U.S.C. 241 and 284).

PURPOSE(S):

The primary purpose of this system is to support research on the pharmacokinetics of drugs of abuse. The term "pharmacokinetics" refers to the manner in which the human body processes a drug.

The clinical investigator used data of a medical nature that is contained in the system to make determinations regarding drug dosages and/or radiochemical exposures appropriate to the individual human subject-participants, in order to preserve and protect the health of each. The system also provides baseline data for studying the drug effects. The Food and Drug Administration (FDA) also may use the records in routine inspections FDA conducts in accordance with its responsibilities to develop standards on the composition, quality, safety, and efficacy of drugs administered to humans, and to monitor experimental usage of drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. We may disclose to a congressional office the record of an individual in response to a verified inquiry from the congressional office made at the written request of the individual.

2. NIH contractors, use the records in this system to accomplish the research purpose for which the records are

collected. The contractors are required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The contractor maintains the records on paper in file folders.

RETRIEVABILITY:

The contractor indexes and retrieves the records by the subject-participant's name.

SAFEGUARDS:

1. *Authorized users:* Only the contract Project Director and his/her research team and the Federal Project Officer and his/her support staff have access to these records.

2. *Physical safeguards:* The contractor keeps all records in a locked metal file cabinet in premises with limited accessibility. Only the clinical investigator (Project Director) has the key to the locked files.

3. *Procedural safeguards:* Only the contract staff have access to the files. Persons other than subject participants who request individually identifiable data from a record, must provide written consent from the subject participant permitting the requested disclosure. The only exception would be for disclosure to persons or organizations permitted by the Privacy Act, section 3(B) to obtain personally identifiable data.

4. *Implementation guidelines:* DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual. In addition, the contract staff complies with contractor's (School of Medicine of the University of North Carolina) standard procedures for safeguarding data.

RETENTION AND DISPOSAL:

The records will be kept no later than September 1998 (5 years after the anticipated completion of the studies). At that time, the NIDA project officer will authorize in writing the clinical investigators to destroy the records by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Project Officer, Pharmacokinetic Studies on Drugs of Abuse, Medications Development Division, National Institute on Drug Abuse, National Institutes of Health, Room 11A55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager listed above. Provide the following information:

Subject-participant's full name and a letter of request (or permission, if the requester is not the subject-participant) with notarized signature of the individual who is the subject of the record, approximate date(s) of experiment(s) in which the individual participated, and drug name (if known). In addition, an individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its content at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address above and reasonably identify the record, specify the information to be contested, the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

The subject-participants and the contractor personnel conducting the research studies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0208

SYSTEM NAME:

Drug Abuse Treatment Outcome Study (DATOS), HHS/NIH/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Research Triangle Institute, Center for Social Research and Policy Analysis, Research Triangle Park, North Carolina 27709.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Voluntary adult clients of federally funded treatment programs, including Treatment Alternative Street Crime (TASC) Programs of the Department of Justice, who requested to be included in TOPS from 1979 through 1986. New data collected from voluntary adults/adolescent clients of public and private funded-treatment programs beginning in 1991 and will continue through 1995.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories are: Demographic data, treatment outcome data, treatment process data, client locator information, and personal identifiers (name and assigned numerical identifier).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, sections 301 and 405 (42 U.S.C. 241 and 284).

PURPOSE(S):

The purpose of the system is to compile information on drug abusers in drug abuse treatment programs in order to derive information on the treatment environments and abusers' behaviors and characteristics subsequent to treatment. Researchers and drug abuse service providers may use the aggregate data to address issues and generate hypotheses to understand better the interactions among the client and community.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Within the restrictions set forth in HHS regulations concerning the confidentiality of drug abuse patient records (42 CFR 2.56), we may disclose a record for a research purpose, when the Department: (a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (c) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except: (A) In emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or

destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; (d) has secured a written statement attesting to the recipient's understanding of, and willingness to, abide by these provisions.

2. The Research Triangle Institute, an NIH contractor, uses the records in this system to accomplish the research purpose for which the records are collected. In the event of followup studies or continuation studies because the contract has been terminated for convenience by the Government, we may disclose records in this system to a subsequent NIH contractor. We would require the new contractor to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Interview forms, magnetic tapes, and disks.

RETRIEVABILITY:

Records are indexed and retrieved by unique alpha numerical identifier. In order to relate the data collected to specific individuals, one must use the link file discussed under Safeguards.

SAFEGUARDS:

1. *Authorized users:* Contractor personnel, the agency project officer, and agency employees whose duties require the use of the information in the system.

2. *Physical safeguards:* The data management task leader, the project leader, or the project director provide technical supervision of all data collection and processing activities. Individually identified forms are stored in a secure, vault-like room provided for this purpose. Authorized personnel have access to the room by one locked door with controlled entry, i.e., only on the written authority of the professional staff member in charge. Computerized records are kept in a vault area with limited accession.

3. *Procedural safeguards:* Because some of the data collected in this study, such as data on drug use, are sensitive and confidential, special safeguards have been established. A Certificate of Confidentiality has been issued under 42 CFR part 2a. This authorization enables persons engaged in research on mental health, including research on the use and effect of psychoactive drugs, to protect the privacy of research subjects by withholding the names or other identifying characteristics from all persons not connected with the conduct

of the research. Persons so authorized may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals. In addition, these records are subject to 42 CFR part 2, the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations (42 CFR 2.56), which state: "Where the content of patient records has been disclosed pursuant to (these regulations) for the purpose of conducting scientific research * * * information contained therein which would directly or indirectly identify any patient may not be disclosed by the recipient thereof either voluntarily or in response to any legal process whether Federal or State."

Another safeguard is that the forms containing subject identification information for client followup and data matching purposes do not include any reference to the purpose of the study. Identification and location information is kept separate from any information that would suggest that the respondent has been in a drug treatment program.

Information on completed forms is entered immediately on the computer. Completed forms and computerized data are released only to authorized persons. Only aggregate data are provided and used in the preparation of necessary and appropriate reports.

A link file system is used. This system has three components: (1) Personal information, (2) data base information, and (3) the link file, which contains identifying number pairs which can be used to match data with individuals. The advantage of this system is that the data base can be used directly for report generation, etc., without the use of decrypting subroutines or access to the personal information or matching link files.

In addition, the computer center being utilized has developed an extensive security system to protect computer account codes and data. This system is described in a publication that is available from the System Manager upon request.

We do not anticipate any disclosure of individually identifiable information to other persons or organizations within the Department of Health and Human Services. Nor does the contractor provide individually identification information to the Department of Justice, with which NIDA has a cooperative agreement for this study.

4. *Implementation Guidelines:* We used the National Bureau of Standards guidelines and Part 6, HHS ADP Systems Security Manual, "ADP System Security" in developing the computer safeguard procedures. Safeguards for

nonautomated records are in accordance with DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual. In addition, project staff complies with the contractor's (Research Triangle Institute) standard procedures for safeguarding data.

The contractor provides only aggregate information to NIDA.

RETENTION AND DISPOSAL:

The contractor destroys interview forms by shredding or burning immediately after contractor staff have completed and verified direct entry on magnetic tape or disk storage. The contractor will destroy individual identification and location data by shredding or burning, under the explicit written authorization of the System Manager, which is anticipated to be no longer than 5 years after the termination of the study unless the information is needed for research purposes. We will retain aggregate data tapes for research purposes. These tapes will not have any individually identifiable information. In accordance with the NIH Records Control Schedule, these tapes will be retained for 5 years after completion of the project (approximately 2000). At that time, the tapes will be retired to the Federal Records Center and destroyed when they are 10 years old or when they are no longer needed for research purposes.

SYSTEM MANAGERS AND ADDRESS:

Drug Abuse Treatment Outcome Study (DATOS), Project Officer, Treatment Services Research Branch, Division of Clinical Research, National Institute on Drug Abuse, National Institutes of Health, Room 10A-30, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. An individual may learn if a record exists about himself/herself upon written request, with notarized signature. The request should include, if known, name of the researcher, location of the research site, approximate date of data collection, any alias used, and subject identification number.

An individual who requests notification of a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or legal guardian who requests notification of an adolescent's

record shall designate a family physician or other health professional (other than a family member) of the Division of Clinical Research staff to whom the record, if any, will be sent. The parent or legal guardian must verify in writing the relationship to the adolescent as well as his/her own identity.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

Persons other than subject individuals, who request individually identifiable data from a record must provide written consent from the subject individual permitting the requested disclosure. The only exception (if not in conflict with confidentiality regulations) would be for disclosure to persons or organizations permitted by the Privacy Act, section 3(b), to obtain personally identifiable data.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Research subjects, and staff in participating drug abuse treatment programs, written clinical evaluations, counselors, psychiatrists, psychotherapists, family members, research assistants, hospitals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0210

SYSTEM NAME:

Shipment Records of Drugs of Abuse to Authorized Researchers, HHS/NIH/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Research Technology Branch, Division of Basic Research, National Institute on Drug Abuse, Room 10A-19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Research Triangle Institute, Research Triangle Park, North Carolina 27709.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual researchers and organizations who are registered with the Drug Enforcement Administration (DEA), Department of Justice (DOJ), some since 1966, and who have voluntarily submitted documentation to the National Institute on Drug Abuse (NIDA) in order to obtain, through the NIDA Drug Supply Program (DSP), drugs of abuse for use in a research project.

CATEGORIES OF RECORDS IN THE SYSTEM:

While the records in this system are research project-related, they support the eligibility of individual researchers to receive drugs of abuse. Types of information contained in the records are: researcher's name, curriculum vitae, research protocol, DEA and (if applicable) Nuclear Regulatory Commission registration numbers (when a radiolabeled compound is requested and shipped), business address (location of research project) and telephone number, summary of research project(s), requests for substance(s), name and amount of each compound requested and shipped, dates material is shipped and received, shipment numbers, and order form numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, sections 301, and 405 (42 U.S.C. 241 and 284); Controlled Substances Act of 1970 (21 U.S.C. 801 et seq.); Atomic Energy Act of 1954, as amended, section 81 (42 U.S.C. 2111); and Energy Reorganization Act of 1974, section 201 (42 U.S.C. 5841). Energy Reorganization Act of 1974, section 201 (42 U.S.C. 5841).

PURPOSE(S):

To facilitate operation of DSP which is a centralized research support service through which the United States Government supplies to the national and international scientific community for research purposes, most Schedule I and many Schedule II-V controlled and noncontrolled substances as specified in the Controlled Substances Act (CSA) of 1970 (21 U.S.C. 801 et seq.). Controlled substances are chemicals and other substances, and their immediate precursors, that the Attorney General has determined to have such potential for abuse as to warrant regulation under the CSA. Some of these substances are radiolabeled materials. Radiolabeled materials are substances to which a small amount of radioactivity is added for use in various studies, such as drug metabolism and mechanisms of drug actions.

This system of records was established to facilitate DSP by enabling NIDA:

1. To verify that requests for drugs of abuse, some of which are radiolabeled, are from authorized individuals/organizations for use in a research project;
2. To verify that the amounts of the materials requested by researchers for animal, in vivo, and in vitro research are justified and available;
3. To supply controlled substances in amounts approved by the Food and Drug Administration (FDA) to researchers conducting research with human subjects;
4. To ship these materials securely in accordance with CSA and the Atomic Energy Act; and
5. To maintain records of these transactions.

FDA also may use the records in routine inspections in accordance with FDA's responsibilities to develop standards on the composition, safety, and efficacy of drugs administered to humans, and to monitor experimental usage of drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. We may disclose the record of an individual to a congressional office in response to a verified inquiry from the congressional office made at the written request of the individual.
2. We may disclose information to DEA, DOJ, to enable DEA to carry out its responsibilities as described in the Controlled Substances Act of 1970.
3. An NIH contractor routinely uses the records in this system to ship controlled substances to authorized recipients. Such contractor is required to maintain Privacy Act safeguards with respect to these records.
4. An NIH contractor may have access to the records in this system in the performance of its software modification/correction tasks specified in its contract. Such contractor is required to maintain Privacy Act safeguards with respect to these records.
5. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the

litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

NIDA maintains "hard copy" records in file folders and automated records on computer disk.

RETRIEVABILITY:

Authorized NIDA and contractor personnel index and retrieve the computerized records by a researcher code number assigned by a computer program at the time a new record is established. Authorized NIDA personnel index and retrieve "hard copy" records by researcher's name. NIDA maintains a computerized, alphabetical cross-reference list that matches names and numbers.

SAFEGUARDS:

1. *Authorized users:* The Chief, Research Technology Branch and his or her support staff, program assistant and clerk-typist, and the contracts' project directors and their support staffs have access to the records.

2. *Physical safeguards:* The "hard copy" records and main computer are physically located at the Parklawn Building, Rockville, Maryland. The computerized records are kept in a room with limited admittance. The room is locked after working hours. The "hard copy" records are stored in locked file cabinets in a room with very limited admittance. This room is also locked after working hours. The Parklawn Building has a 24-hour guard patrol service.

3. *Procedural safeguards:* The terminals are housed in a secured work area with limited admittance. Contract personnel use a password identification system to obtain access; NIDA changes the passwords periodically.

4. *Implementation guidelines:* DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual, and Part 6, "ADP System Security," in the HHS ADP Systems Security Manual.

RETENTION AND DISPOSAL:

NIDA maintains an individual's record for 5 years after the researcher's last request for, or shipment of, a drug of abuse. We consider the record inactive after that, and erase it from the computer disk by a delete routine. The delete routine automatically deletes the computerized cross-reference as well. We destroy the "hard copy" record by shredding. The system is checked once a year for inactive records.

SYSTEM MANAGER(S) AND ADDRESS:

Project Director, Drug Supply Program, Research Technology Branch, Division of Basic Research, Room 10A-19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. An individual may learn if a record exists about himself or herself upon written request. The request should include the researcher's name and business address at the time of last shipment. The request must be signed in ink by the individual researcher. Verifiable proof of identity is required.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Initial source is the individual researcher. Some of the DEA registration information provided by a researcher is verified through a DEA computer check. FDA provides information concerning type and amount of controlled substance(s) to be shipped to an individual researcher for research projects involving human subjects.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0211

SYSTEM NAME:

Intramural Research Program Records of In- and Out-Patients With Various

Types of Alcohol Abuse and Dependence, Relatives of Patients With Alcoholism, and Healthy Volunteers, HHS/NIH/NIAAA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

A list of specific project sites is available from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In- and out-patients with alcohol abuse and dependence; alcohol-induced organic brain syndromes; their relatives; and healthy volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Research data of wide variety including biochemical measures, psychophysiological and psychological tests, questionnaires, clinical and behavioral observations and interviews, physical examinations, and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, as amended, sections 301 (42 U.S.C. 241) and 510 (42 U.S.C. 290bb). These sections authorize the conduct of general health research and research into alcoholism and alcohol abuse.

PURPOSE(S):

These records are used for diagnosis and treatment of patients with alcohol abuse and dependence and related conditions; behavioral research relating to the causes, diagnoses, and treatment of addictions; and basic research on behavioral and biological processes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system are covered by section 527 of the Public Health Service Act (42 U.S.C. 290ee-3) and 42 CFR, chapter I, subchapter A, part 2, on confidentiality of alcohol and drug abuse patient records. In accordance with these regulations, the records are confidential and may only be disclosed with the written consent of the patient with specific restrictions, and without the patient's consent in the following instances: (1) To medical personnel to the extent necessary to meet a bona fide emergency; (2) to qualified personnel for the purpose of conducting scientific research; or (3) if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause

therefore, after certain considerations, and with appropriate safeguards. Routine uses of information in this system are limited to the following:

1. A record may be disclosed for a research purpose, when the Department: (a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) has determined that the research purpose: (1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (c) has required the recipient to— (1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; (d) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office at the written request of that individual, in accordance with 42 CFR, chapter I, subchapter A, part 2.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records may be stored in file folders, on index cards, computer tapes and disks, microfiche, microfilm and audio and video tapes. Normally the factual data, with study code numbers, are stored on computer tape or disk, while the key to personal identifiers is stored separately, without factual data, in paper files.

RETRIEVABILITY:

During data collection stages and followup, retrieval by personal identifier (e.g., name or medical record number) is necessary. During the data analysis stage, data are normally retrieved by variables of interest, e.g., age, diagnosis, etc.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for the particular records maintained in each project. Depending on the sensitivity of the project, additional safeguards may be added.

1. **Authorized users:** Only NIAAA medical and research staff have access to these records, as authorized by the system manager.

2. **Physical safeguards:** Records are stored in locked rooms, locked file cabinets, and/or secured computer facilities. Personal identifiers and link codes are separated as much as possible and stored in locked files.

3. **Procedural safeguards:** Collection and maintenance of data are consistent with legislation and regulations for protection of human subjects, informed consent, confidentiality, and confidentiality specific to drug and alcohol abuse patients. Computer data access is limited through the use of key words, a series of account numbers, and passwords which are changed frequently and known only to authorized personnel.

4. **Implementation Guidelines:** DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual, and Part 6, "ADP System Security" in the HHS Information Resource Management Manual.

RETENTION AND DISPOSAL:

Records are held for 5 years after completion of the project, retired to a Federal Records Center, and subsequently disposed of after 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Clinical Director, Laboratory of Clinical Studies, Division of Intramural Clinical and Biological Research, National Institutes of Health, Building 10, Room 3B-19, 9000 Rockville Pike, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. Provide notarized signature as proof of identity. The request should include as much of the following information as possible: (a) Full name; (b) nature of illness (if any); (c) title of study; (d) name of researcher

conducting study. An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. A parent or guardian who requests notification of child's/incompetent person's record shall at the time the request is made designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The designee will receive the record in all cases and upon review will determine whether the record should be made available to the parent or guardian.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information gathered from individuals under study, either patient or normal subject, contract surveys, hospital records, medical and nursing staff notes, and from Privacy Act system of records 90-25-0099, "Clinical Research: Patient Medical Records, HHS/NIH/CC."

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.
[FR Doc. 93-30424 Filed 12-30-93; 8:45 am]
BILLING CODE 4101-01-P

Centers for Disease Control and Prevention**Privacy Act of 1974; Annual Publication of Systems of Records**

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Publication of minor changes to notices of systems of records.

SUMMARY: In accordance with the Office of Management and Budget Circular No. A-130, Appendix I, "Federal Agency Responsibilities for Maintaining

Records About Individuals," the Centers for Disease Control and Prevention (CDC) is publishing the table of contents and minor changes to its notices of systems of records.

SUPPLEMENTARY INFORMATION:

CDC has completed the annual review of its systems of records and is publishing below the table of contents and those minor changes which affect the public's right or need to know, such as clarification of categories of individuals covered by systems, and changes in the system location of records, or the designation and address of system managers.

1. Table of Contents

A. The following CDC active system of records was last published in the **Federal Register**, 57 FR 62812, December 31, 1992:

09-20-0136 Epidemiologic Studies and Surveillance of Disease Problems, HHS/CDC/NCID.

B. The following CDC active systems of records were last published in the **Federal Register**, 51 FR 42449, November 24, 1986:

09-20-0000 Cooperative Mycoses Study, HHS/CDC/NCID.

09-20-0001 Certifying Interpreting Physician File, HHS/CDC/NIOSH.

09-20-0055 Administrative Files for Research/Demonstration and Training Grants, and Cooperative Agreements Applications, HHS/CDC/PGO.

09-20-0059 Division of Training Mailing List, HHS/CDC/NIOSH.

09-20-0089 Studies of Treatment of Tuberculosis and Other Mycobacterioses, HHS/CDC/NCPS.

09-20-0090 Studies of Testing for Tuberculosis and Other Mycobacterioses, HHS/CDC/NCPS.

09-20-0096 Records of Tuskegee Study Health Benefit Recipients, HHS/CDC/NCPS.

09-20-0102 Alien Mental Waiver Program, HHS/CDC/NCPS.

09-20-0103 Alien Tuberculosis Follow-up Program, HHS/CDC/HCPS.

09-20-0106 Specimen Handling for Testing and Related Data, HHS/DCD/NCID.

09-20-0112 Fellowship Program and Guest Researcher Records, HHS/CDC/PMO.

09-20-0113 Epidemic Investigation Case Records, HHS/CDC/NCID.

09-20-0117 Medical and Test Record Results of Individuals Involved in NIOSH Laboratory Studies, HHS/CDC/NIOSH.

09-20-0118 Study at Work Sites Where Agents Suspected of Being Occupational Hazards Exist, HHS/CDC/NIOSH.

09-20-0137 Passport File, HHS/CDC/IHPO.

09-20-0138 Epidemic Intelligence Service Officers Files, HHS/CDC/EPO.

09-20-0147 Occupational Health Epidemiological Studies, HHS/CDC/NIOSH.

- 09-20-0149 Morbidity Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NIOSH.
- 09-20-0153 Mortality Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NIOSH.
- 09-20-0154 Medical and Laboratory Studies, HHS/CDC/NIOSH.
- 09-20-0157 Clinical Laboratory Personnel Proficiency Test Results (Medicare), HHS/CDC/PHPPO.
- 09-20-0159 Records of Subjects in Certification, Testing, Studies of Personal Protective Devices, and Accident Investigations, HHS/CDC/NIOSH.
- 09-20-0160 Records of Subjects in Health Promotion and Education Studies, HHS/CDC/NCCDPPH.
- 09-20-0161 Records of Health Professionals in Disease Prevention and Control Training Programs, HHS/CDC/NCPH.
- 09-20-0162 Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies, HHS/CDC/NCEH.

C. The following active CDC systems were last published in the **Federal Register**, 51 FR 42368, November 24, 1986:

- 09-20-0163 Applicants for National Center for Health Statistics Technical Assistance, HHS/CDC/NCHS. (Formerly numbered 09-37-0009.)
- 09-20-0168 Curricula Vitae of Consultants to the National Center for Health Statistics, HHS/CDC/NCHS. (Formerly numbered 09-37-0014.)
- 09-20-0169 Users of Health Statistics, HHS/CDC/NCHS. (Formerly numbered 09-37-0016.)

D. The following CDC active systems were last published in the **Federal Register**, 49 FR 37692, September 25, 1984:

- 09-20-0164 Health and Demographic Surveys Conducted in Probability Samples of the United States Population, HHS/CDC/NCHS. (Formerly numbered 09-37-0010.)
- 09-20-0165 Health Manpower Inventories and Surveys, HHS/CDC/NCHS. (Formerly number 09-37-0011.)
- 09-20-0166 Vital Statistics for Births, Deaths, Fetal Deaths, Marriages, and Divorces Occurring in the United States During Each Year, HHS/CDC/NCHS. (Formerly numbered 09-37-0012.)
- 09-20-0167 Health Resources Utilization Statistics, HHS/CDC/NCHS. (Formerly numbered 09-37-0013.)

2. The Preventive Health Amendments of 1992 changed the title of the Centers for Disease Control to the Centers for Disease Control and Prevention. This new organizational title represents minor changes in system location and system manager and address categories of all of CDC's systems. These system notice modifications will be shown in this

document in those notices in which there are other address changes. The next comprehensive republication of notices will describe all of CDC's systems in their entirety.

In late October of 1993, the Secretary, Department of Health and Human Services, approved the establishment of the National Immunization Program. Elevating the immunization activities of CDC from a division level within the National Center for Prevention Services to a program reporting to the Director, CDC, communicates the Administration's support and commitment to improving the immunization level of children. This new organizational title represents minor changes in the system location and system manager and address categories of systems 09-20-0113 and 09-20-0136, which are shown in their proper sequence in Section 3 below.

3. The following systems are amended to reflect changes in the system location of records or the system manager and address category:

09-20-0089

SYSTEM NAME:

Studies of Treatment of Tuberculosis and Other Mycobacterioses, HHS/CDC/NCPH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

Division of Tuberculosis Elimination, National Center for Prevention Services, Corporate Square, Bldg. 10, Rm. 2208, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333 and Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identified data are currently located is available upon request to the system manager:

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Tuberculosis Elimination, National Center for Prevention Services, Corporate Square, Bldg. 10, Rm. 2313, MS E10, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

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09-20-0090

SYSTEM NAME:

Studies of Testing for Tuberculosis and other Mycobacterioses, HHS/CDC/NCPH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

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SYSTEM LOCATION:

Division of Tuberculosis Elimination, National Center for Prevention Services, Corporate Square, Bldg. 10, Rm. 2208, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333 and Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Tuberculosis Elimination, National Center for Prevention Services, Corporate Square, Bldg. 10, Rm. 2313, MS E10, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

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09-20-0096

SYSTEM NAME:

Records of Tuskegee Study Health Benefit Recipients, HHS/CDC/NCPH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

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SYSTEM LOCATION:

National Center for Prevention Services, Corporate Square, Bldg. 11, Rms. 2117, 2118, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333 and Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Prevention Services, Corporate Square, Bldg. 11, Rm. 2106, MS E07, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

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09-20-0102

SYSTEM NAME:

Alien Mental Waiver Program, HHS/CDC/NCPH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

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SYSTEM LOCATION:

Medical Screening Section, Division of Quarantine, National Center for Prevention Services, Corporate Square, Bldg. 10, Rm. 1105, Centers for Disease Control and Prevention, 1600 Clifton

Road, NE, Atlanta, GA 30333 and Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Quarantine, National Center for Prevention Services, Corporate Square, Bldg. 10, Rm. 1207, MS E03, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333

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09-20-0103

SYSTEM NAME:

Alien Tuberculosis Follow-up Program, HHS/CDC/NCPS.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

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SYSTEM LOCATION:

Office of the Director, Division of Quarantine, National Center for Prevention Services, Corporate Square, Bldg. 10, Rm. 1209, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Quarantine, National Center for Prevention Services, Corporate Square, Bldg. 10, Rm. 1207, MS E03, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

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09-20-0106

SYSTEM NAME:

Specimen Handling for Testing and Related Data, HHS/CDC/NCID.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

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SYSTEM LOCATION:

Material, Data and Specimen Handling Section, Scientific Resources Program, National Center for Infectious Diseases, Bldg. 4, Rm. B35, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

San Juan Laboratories, National Center for Infectious Diseases, Centers for Disease Control and Prevention, San Juan, Puerto Rico 00936.

Division of Vector-Borne Infectious Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, Foot Hills Campus, Fort Collins, CO 80522 and Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the appropriate system manager.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Infectious Diseases, Bldg. 1, Rm. 6013, MS C12, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Chief, Dengue Branch, Division of Vector-Borne Infectious Diseases, San Juan Laboratories, National Center for Infectious Diseases, Centers for Disease Control and Prevention, GPO Box 4532, San Juan, Puerto Rico 00936.

Director, Division of Vector-Borne Infectious Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, PO Box 2087 (Foot Hills Campus), Fort Collins, CO 80522.

Policy coordination is provided by: Associate Director for Management and Operations, Bldg. 1, Rm. 2011, MS D15, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

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09-20-0112

SYSTEM NAME:

Fellowship Program and Guest Research Records, HHS/CDC/PMO.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

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SYSTEM LOCATION:

Recruitment Branch, Personnel Management Office, Bldg. 1, Rm. B237, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333 and National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.

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SYSTEM MANAGER(S) AND ADDRESS:

Chief, Recruitment Branch, Personnel Management Office, Bldg. 1, Rm. 1043, MS D45, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

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09-20-0113

SYSTEM NAME:

Epidemic Investigation Case Records, HHS/CDC/NCID.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

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SYSTEM LOCATION:

National Center for Infectious Diseases, Bldg. 1, Rm. 6013, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Epidemiology Program Office, Bldg. 1, Rm. 5009, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

National Center for Prevention Services, Corporate Square, Bldg. 11, Rm. 2106, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

National Center for Environmental Health, Chamblee Bldg. 101, Rm. 3116, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341-3724.

National Center for Injury Prevention and Control, Koger Davidson Bldg., Rm. 1078, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341-3724.

National Immunization Program, Corporate Square, Bldg. 12, Rm. 5113, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333 and Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Infectious Diseases, Bldg. 1, Rm. 6013, MS C12, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Director, Epidemiology Program Office, Bldg. 1, Rm. 5009, MS C08, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Director, National Center for Prevention Services, Corporate Square, Bldg. 11, Rm. 2106, MS E07, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Director, National Center for Environmental Health, Chamblee Bldg. 101, Rm. 3116, MS F29, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341-3724.

Director, National Center for Injury Prevention and Control, Koger Davidson Bldg., Rm. 1078, MS F36, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341-3724.

Director, National Immunization Program, Corporate Square, Bldg. 12, Rm. 5113, MS E05, Centers for Disease

Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Policy coordination is provided by: Associate Director for Management and Operations, Bldg. 1, Rm. 2011, MS D15, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

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09-20-0136

SYSTEM NAME:

Epidemiologic Studies and Surveillance of Disease Problems, HHS/CDC/NCID.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

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SYSTEM LOCATION:

National Center for Infectious Diseases, Bldg. 1, Rm. 6013, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

San Juan Laboratories, National Center for Infectious Diseases, Centers for Disease Control and Prevention, San Juan, Puerto Rico 00936.

National Center for Prevention Services, Corporate Square, Bldg. 11, Rm. 2106, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

National Center for Environmental Health, Chamblee Bldg. 101, Rm. 3116, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341-3724.

National Center for Injury Prevention and Control, Koger Davidson Bldg., Rm. 1078, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341-3724.

Epidemiology Program Office, Bldg. 1, Rm. 5009, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Public Health Practice Program Office, Executive Park, Bldg. 24, Rm. 110, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

National Center for Chronic Disease Prevention and Health Promotion, Rhodes Bldg., Rm. 4000, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341-3724.

National Immunization Program, Corporate Square, Bldg. 12, Rm. 5113, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333 and Federal Records Centers, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are

currently located is available upon request to the appropriate system manager.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Infectious Diseases, Bldg. 1, Rm. 6013, MS C12, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Director, National Center for Prevention Services, Corporate Square, Bldg. 11, Rm. 2106, MS E07, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Director, National Center for Environmental Health, Chamblee Bldg. 101, Rm. 3116, MS F29, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341-3724.

Director, National Center for Injury Prevention and Control, Koger Davidson Bldg., Rm. 1078, MS F36, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341-3724.

Director, Epidemiology Program Office, Bldg. 1, Rm. 5009, MS C08, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Director, Public Health Practice Program Office, Executive Park, Bldg. 24, Rm. 110, MS E20, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Director, National Center for Chronic Disease Prevention and Health Promotion, Rhodes Bldg., Rm. 4000, MS K40, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341-3724.

Director, National Immunization Program, Corporate Square, Bldg. 12, Rm. 5113, MS E05, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Policy coordination is provided by: Associate Director for Management and Operations, Bldg. 1, Rm. 2011, MS D15, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

* * * * *

09-20-0157

SYSTEM NAME:

Clinical Laboratory Personnel Proficiency Test Results (Medicare), HHS/CDC/PHPPPO.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

Public Health Practice Program Office, Chamblee Bldg. 102, Rm. 2401, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341-3724.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Public Health Practice Program Office, Executive Park, Bldg. 24, Rm. 110, MS E20, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

* * * * *

09-20-0161

SYSTEM NAME:

Records of Health Professionals in Disease Prevention and Control Training Programs, HHS/CDC/NCPS.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

National Center for Prevention Services, Corporate Square, Bldg. 12, Rm. 3308, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Public Health Practice Program Office, Bldg. 2, Rm. B50, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Division of Health Education, Executive Park, Bldg. 4, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE, Atlanta, GA 30333 and Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Prevention Services, Corporate Square, Bldg. 11, Rm. 2106, MS E07, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Director, Public Health Practice Program Office, Executive Park, Bldg. 24, Rm. 110, MS E20, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

Director, Division of Health Education, Executive Park, Bldg. 4, Rm. 2220D, MS E33, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE, Atlanta, GA 30333.

Policy coordination is provided by: Associate Director for Management and Operations, Bldg. 1, Rm. 2011, MS D15,

Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, GA 30333.

09-20-0162

SYSTEM NAME:

Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies, HHS/CDC/NCEH.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

SYSTEM LOCATION:

National Center for Environmental Health, Chamblee Bldg. 101, Rm. G336, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341-3724 and Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

Data are located at contractor sites as data are collected. A list of contractor sites where individually identifiable data are currently located is available upon request to the appropriate system manager.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Environmental Health, Chamblee Bldg. 101, Rm. 3116, MS F29, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341-3724.

4. The Department of Energy (DOE) effected a Memorandum of Understanding with the Department of Health and Human Services (HHS) to transfer its analytic epidemiology research program to HHS. The National Institute for Occupational Safety and Health and the National Center for Environmental Health within the Centers for Disease Control and Prevention have responsibility for epidemiologic studies, including laboratory analysis, of workers exposed to radiation and other physical and chemical hazards at DOE facilities. These are workers who have been employed by DOE and its predecessor agencies and their contractors at 111 sites in over 30 states since the early 1940's. Accordingly, the following system notices have been updated to clarify and more accurately describe the categories of individuals section within the affected systems:

09-20-0136

SYSTEM NAME:

Epidemiologic Studies and Surveillance of Disease Problems, HHS/CDC/NCID.

Minor alterations have been made to this system notice. The following category is revised in its entirety:

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adults and children with diseases and other preventable conditions of public health significance; also included are control group participants. Workers employed by the Department of Energy and its predecessor agencies and their contractors are also included.

09-20-0147

SYSTEM NAME:

Occupational Health Epidemiological Studies, HHS/CDC/NIOSH.

Minor alterations have been made to this system notice. The following category is revised in its entirety:

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Working populations exposed to physical and/or chemical agents that may damage the human body in any way. Some examples are: (1) Organic carcinogens, (2) inorganic carcinogens, (3) mucosal or dermal irritants, (4) fibrogenic materials, (5) acute toxic agents including sensitizing agents, (6) neurotoxic agents, (7) mutagenic (male and female) and teratogenic agents, (8) bio-accumulating non-carcinogen agents, and (9) chronic vascular disease-causing agents. Also included are those individuals in the general population who have been selected as control groups. Workers employed by the Department of Energy and its predecessor agencies and their contractors are also included.

Dated: November 1, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-27226 Filed 12-28-93; 8:45 am]

BILLING CODE 4160-18-P

Health Resources and Services Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Department of Health and Human Services; Public Health Service

(PHS); Health Resources and Services Administration (HRSA).

ACTION: Publication of minor changes to systems of records notices.

SUMMARY: In accordance with Office of Management and Budget Circular No. A-130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," HRSA is publishing minor changes to its notices of systems of records.

SUPPLEMENTARY INFORMATION: HRSA has completed the annual review of its systems of records and is publishing below those minor changes which affect the public's right or need to know, such as system deletions, title changes, and changes in the system location of records, or the addresses of systems managers.

1. HRSA has added the following systems of records since the last annual review:

09-15-0058 Faculty Loan Repayment Program HHS/HRSA/BHPr. 57 FR 60325-60327, December 18, 1992.

09-15-0059 Health Resources and Services Administration Correspondence Control System, HHS/HRSA/OA. 58 FR 36972-36974, July 9, 1993.

2. New routine users were added to the following systems:

09-15-0044 Health Education Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BHPr. 58 FR 16537, March 29, 1993.

09-15-0058 Faculty Loan Repayment Program, HHS/HRSA/BHPr. 58 FR 12589, March 5, 1993.

3. The following system of records was altered:

09-15-0037 Public Health Service (PHS) and National Health Service Corps (NHSC) Scholarship/Loan Repayment Participants Records System, HHS/HRSA/BPHC. 58 FR 12968-12973, March 8, 1993.

4. The following system of records has been deleted:

09-15-0008 Emergency Non-PHS Treatment Authorization File, HHS/HRSA/BPHC. This system has not been used since the Public Health Service hospitals and clinics were closed in 1981. Records that were in that system are now included in system of records 09-15-0029 PHS Beneficiary-Contract Medical/Health Care Records, HHS/HRSA/BPHC.

5. Other minor system-notice changes affecting individual categories are published below.

Dated: November 8, 1993.

James A. Walsh,

Associate Administrator for Operations and Management.

Table of Contents

The following table of contents lists all currently active Privacy Act systems

of records maintained by the Health Resources and Services Administration:

- 09-15-0001 Division of Federal Occupational Health Medical and Counseling Records, HHS/HRSA/BPHC.
- 09-15-0002 Record of Patients' Personal Valuables and Monies, HHS/HRSA/BPHC.
- 09-15-0003 Contract Physicians and Consultants, HHS/HRSA/BPHC.
- 09-15-0004 Federal Employee Occupational Health Data System, HHS/HRSA/BPHC.
- 09-15-0007 Patients Medical Records System PHS Hospitals/Clinics, HHS/HRSA/BPHC.
- 09-15-0022 Accounts Receivable, HHS/HRSA/OA.
- 09-15-0026 Medical Fellowships and Educational Loans, HHS/HRSA/OA.
- 09-15-0028 PHS Clinical Affiliation Trainee Records, HHS/HRSA/BPHC.
- 09-15-0029 PHS Beneficiary-Contract Medical/Health Care Records, HHS/HRSA/BPHC.
- 09-15-0037 Public Health Service (PHS) and National Health Service Corps (NHSC) Scholarship/Loan Repayment Participant Records System, HHS/HRSA/BPHC.
- 09-15-0038 Disability Claims of the Nursing Student Loan Program, HHS/HRSA/BPHC.
- 09-15-0039 Disability Claims in the Health Professions Student Loan Program, HHS/HRSA/BPHC.
- 09-15-0040 Health Professions Student Loan Repayment Program, HHS/HRSA/BPHC.
- 09-15-0041 Health Professions Student Loan Cancellation, HHS/HRSA/BPHC.
- 09-15-0042 Physician Shortage Area Scholarship Program, HHS/HRSA/BPHC.
- 09-15-0043 Cuban Loan Program, HHS/HRSA/OA.
- 09-15-0044 Health Educational Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BPHC.
- 09-15-0045 Health Resources and Services Administration Loan Repayment/Debt Management Records Systems, HHS/HRSA/OA.
- 09-15-0046 Health Professions Planning and Evaluation, HHS/HRSA/OA.
- 09-15-0052 Nurse Practitioner and Nurse Midwifery Traineeship Program, HHS/HRSA/BPHC.
- 09-15-0054 National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners, HHS/HRSA/BPHC.
- 09-15-0055 Organ Procurement and Transplantation Network (OPTN) Data System, HHS/HRSA/BPHC.
- 09-15-0056 National Vaccine Injury Compensation Program, HHS/HRSA/BPHC.
- 09-15-0057 Scholarships for the Undergraduate Education of Professional Nurses Grant Programs, HHS/HRSA/BPHC.
- 09-15-0058 Faculty Loan Repayment Program, HHS/HRSA/BPHC.
- 09-15-0059 Health Resources and Services Administration Correspondence Control System, HHS/HRSA/OA.

Changes

09-15-001

SYSTEM NAME:

Division of Federal Occupational Health Medical and Counseling Records, HHS/HRSA/BPHC.

Minor changes have been made to this system. In addition to the System Name, the following categories should be revised:

* * * * *

SYSTEM LOCATION:

A current list of health and counseling unit sites is available by writing to the System Manager at the address below.

Data are occasionally located at medical laboratories, medical consultants, or computer processing firm sites. A list of sites where individually identifiable data is currently located is available upon request to the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees seen in health units under agreements with the Division of Federal Occupational Health (PHS/DFOH) and individuals examined/treated/counseled by PHS/DFOH staff and health professionals under contract to PHS/DFOH.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

* * * * *

2. In the event of a change in sponsorship of a PHS/DFOH health unit or in the case of a mass transfer of employees covered by a PHS/DFOH health unit to one served by a nondepartmental organization, the health records will be transferred to the custodianship of the new organization, with the approval of PHS/DFOH.

* * * * *

SAFEGUARDS:

1. *Authorized users:* DFOH Health Unit personnel, physicians, nurses, and other allied health professionals.

2. *Physical safeguards:* All users of personal information in connection with the performance of their jobs protect information from the public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with the DFOH Manual of Operations. Patient-authorized release of records to a third party will only be accomplished when the third party has a suitable system of records, such as those meeting the

requirements of 5 CFR part 293, designed to minimize unauthorized access. Contractors are required to maintain confidentiality safeguards with respect to these records. These safeguards are in accordance with DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Federal Occupational Health, Bureau of Primary Health Care, Health Resources and Services Administration, 3rd Floor, West Tower Building, 4530 East West Highway, Rockville, MD 20857.

* * * * *

09-15-0002

SYSTEM NAME:

Record of Patient's Personal Valuables and Monies, HHS/HRSA/BPHC.

A minor change has been made to this system. The following category should be revised:

* * * * *

RETENTION AND DISPOSAL:

Number of years held: Until audited by HHS Audit Agency. How destroyed: Incinerator or shredding.

* * * * *

09-15-0003

SYSTEM NAME:

Contract Physicians and Consultants, HHS/HRSA/BPHC.

Minor changes have been made to this system. The following categories should be revised.

* * * * *

SYSTEM LOCATION:

Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

General Services Officer, Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

* * * * *

09-15-0004

SYSTEM NAME:

Federal Occupational Health Data System, HHS/HRSA/BPHC. Minor changes have been made to this system.

In addition to the System Name, the following categories should be revised:

* * * * *

SYSTEM LOCATION:

Division of Federal Occupational Health, Bureau of Primary Health Care,

3rd Floor, West Tower Building, 4350 East West Highway, Bethesda, Maryland, MAILING ADDRESS: 3rd Floor, West Tower Building, 4350 East West Highway, Rockville, MD 20857.
* * * * *

SAFEGUARDS:

1. Authorized Users: DFOH personnel, service provision site physicians, nurses, and other allied health professionals with a need to know.
* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Federal Occupational Health, Bureau of Primary Health Care, Health Resources and Service Administration, 3rd Floor, West Tower Building, 4350 East West Highway, Bethesda, Maryland. MAILING ADDRESS: 3rd Floor, West Tower Building, 4350 East West Highway, Rockville, MD 20857.
* * * * *

09-15-0007

SYSTEM NAME:

Patients Medical Records System PHS Hospitals/Clinics, HHS/HRSA/BPHC.

A minor change has been made to this system. The following category should be revised.
* * * * *

Appendix 1**B. Successor Organizations**

Director, Johns Hopkins Medical Service, 3100 Wyman Park Drive, Baltimore, MD 21211.

Director, Brighton Marine Public Health Center, 77 Warren Street, Boston, MA 02135.

Administrator, Lutheran Medical Center, 2609 Franklin Boulevard, Cleveland, OH 44114.

Director, Hospital of St. John, 2050 Space Park Drive, Nassau Bay, TX 77058.

Administrator, Martins Point Health Center, 331 Veranda Street, Portland, ME 04103.

Officer-in-Charge, U.S. Army St. Louis Outpatient Clinic, 1520 Market Street, St. Louis, MO 63103.

Director, Pacific Medical Center, 1200 12th Avenue South, Seattle, WA 98114.

Director, Bailey Seton Hospital, Bay Street and Vanderbilt Avenue, Staten Island, NY 10304.
* * * * *

09-15-0037

SYSTEM NAME:

Public Health Service (PHS) and National Health Service Corps (NHSC) Scholarship/Loan Repayment Participants Records System, HHS/HRSA/BPHC.

Minor changes have been made to this system. The following categories should be revised:
* * * * *

SYSTEM LOCATION:

Division of Scholarships and Loan Repayments, Bureau of Primary Health Care, Health Resources and Services Administration (HRSA), 10th Floor, West Tower Building, 4350 East West Highway, Bethesda, Maryland.

Division of National Health Service Corps, Bureau of Primary Health Care, HRSA, 8th Floor, West Tower Building, 4350 East West Highway, Bethesda, Maryland.

Parklawn Computer Center, 5600 Fishers Lane, Room 2A-53, Rockville, MD 20857.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

PHS Health Data Center, Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

Records are also located at contractor sites. A list of contractor sites where individually identifiable data are currently located is available upon request to the Policy-Coordinating Official at that individual's address shown in the "System Manager(s) and Address" section of this notice.

Partial records are also located at Department of Health and Human Services (HHS) regional offices. A list of regional offices where individually identifiable data are currently located is available upon request to the Policy-Coordinating Official.
* * * * *

RETENTION AND DISPOSAL:

Applications of individuals not selected for participation in a scholarship program are retained for six months, then destroyed by shredding. Applications, contracts, and other records of NHSC scholarship recipients are retained through the completion or other disposition of the scholarship service obligation, then sent to the Federal Records Center for an additional 15-year retention period and destroyed in accordance with Federal Records Center disposition standards. Automated historical tapes are sent to a Federal Records Center and the initial records are destroyed in accordance with the HRSA Records Control Schedule.
* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Policy-Coordinating Official: Director, Bureau of Primary Health Care (BPHC), Health Resources and Services Administration (HRSA), 11th Floor,

West Tower Building, 4350 East West Highway, Rockville, MD 20857.

Scholarship Applicants/Recipients: Director, Division of Scholarships and Loan Repayments, BPHC, HRSA, 10th Floor, West Tower Building, 4350 East West Highway, Rockville, MD 20857.

Placement/Assignment: Director, Division of National Health Service Corps, BPHC, HRSA, 8th Floor, West Tower Building, 4350 East West Highway, Rockville, MD 20857.
* * * * *

09-15-0038

SYSTEM NAME:

Disability Claims of the Nursing Student Loan Program, HHS/HRSA/BHP.

A minor change has been made to this system. The following category should be revised:
* * * * *

SYSTEM LOCATION:

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8-34, Rockville, MD 20857.

Washington National Records Center, 4204 Suitland Road, Suitland, MD 20409.
* * * * *

09-15-0042

SYSTEM NAME:

Physician Shortage Area Scholarship Program, HHS/HRSA/BPHC. Minor changes have been made to this system.

The following categories should be revised:
* * * * *

SYSTEM LOCATION:

Division of Scholarships and Loan Repayments, Bureau of Primary Health Care, Health Resources and Services Administration, 10th Floor, West Tower Building, 4350 East West Highway, Bethesda, Maryland.

Parklawn Computer Center, 5600 Fishers Lane, Room 2A-53, Rockville, MD 20857.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

PHS Health Data Center, Gillis W. Long Hansen's Disease Center, Carville, LA 70721.
* * * * *

STORAGE:

File folders and Model 204 Data Base.
* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Scholarships and Loan Repayments, Bureau of Primary

Health Care, Health Resources and Services Administration, 10th Floor, West Tower Building, 4350 East West Highway, Bethesda, Maryland.
MAILING ADDRESS: 10th Floor, West Tower Building, 4350 East West Highway, Bethesda, Maryland.
MAILING ADDRESS: 10th Floor, West Tower Building, 4350 East West Highway, Rockville, MD 20857.

* * * * *

09-15-0044

SYSTEM NAME:

Health Educational Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BHPr.

Minor changes have been made to this system. The following categories should be revised:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 727 and 728 of the Public Health Service Act, as amended (42 U.S.C. 294), which authorizes the establishment of a federal program of student loan assistance;

Section 739 of the Public Health Service Act, as amended (42 U.S.C. 2941), which directs the Secretary to require institutions to provide information for each student who has a loan;

Debt Collection Act of 1982 (5 U.S.C. 5514 note);

Section 222 of the Health Professions Training Assistance Act of 1985 (50 U.S.C. App. 462 note) which provides for a study on compliance with the Selective Service Act; and

Section 709 of the Health Professions Education Extension amendments of 1992 (42 U.S.C. 292) which authorizes disclosure and publication of HEAL defaulters.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Chief, HEAL Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8-29, Rockville, MD 20857.

* * * * *

09-15-0045

SYSTEM NAME:

Health Resources and Services Administration Loan Repayment/Debt Management Records System, HHS/HRSA/OA.

A minor change has been made to this system. The following category should be revised:

* * * * *

SYSTEM LOCATION:

Division of Fiscal Services, Office of the Administrator, Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Room 16-05, Rockville, MD 20857.

Bureau of Health Professions, HRSA, 5600 Fishers Lane, Room 8-05, Rockville, MD 20857.

Bureau of Primary Health Care, HRSA, 14th Floor, West Tower Building, 4350 East West Highway, Bethesda, Maryland.

Indian Health Service, 5600 Fishers Lane, Room 6-05, Rockville, MD 20857.

Grants Management Branch, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10-25, Rockville, MD 20857.

Grants Management Branch, National Institute on Alcohol Abuse and Alcoholism, 5600 Fishers Lane, Room 16-86, Rockville, MD 20857.

Grants Management Branch, OPS, National Institute of Mental Health, 5600 Fishers Lane, Room 7C-23, Rockville, MD 20857.

Federal Assistance Accounting Branch, Division of Financial Management, National Institutes of Health, Building 31, Room B1B04, 9000 Rockville Pike, Bethesda, MD 20892.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

* * * * *

09-15-0046

SYSTEM NAME:

Health Professions Planning and Evaluation, HHS/HRSA/OA.

A minor change has been made to this system. The following category should be revised:

* * * * *

SYSTEM MANAGER(S) AND LOCATION:

Deputy Director, Division of Information and Analysis, Office of Planning, Evaluation and Legislation, HRSA, 5600 Fishers Lane, Room 14-36, Rockville, MD 20857.

* * * * *

09-15-0054

SYSTEM NAME:

National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners, HHS/HRSA/BHPr.

A minor change has been made to this system. The following category should be revised:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Quality Assurance, Bureau of Health

Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8-67, Rockville, MD 20857.

* * * * *

09-15-0059

SYSTEM NAME:

Health Resources and Services Administration Correspondence Control System, HHS/HRSA/OA.

Minor changes have been made to this system. The following categories should be revised:

* * * * *

SYSTEM LOCATION:

* * * * *

4. Office of Program and Policy Development, Bureau of Primary Health Care, HRSA, 4350 East West Highway, Room 7-2B3, Rockville, MD 20857.

* * * * *

SYSTEM MANAGER(S) AND LOCATIONS:

Policy Coordinator: Associate Administrator for Policy Coordination, HRSA, 5600 Fishers Lane, Room 14-15, Rockville, MD 20857.

System Manager: Chief, Executive Secretariat, Office of Policy Coordination, Office of the Administrator, HRSA, 5600 Fishers Lane, Room 14A-08, Rockville, MD 20857.

System Manager: Chief, Extramural Activities Branch, Office of Program Development, Bureau of Health Resources Development, HRSA, 5600 Fishers Lane, Room 13A-22, Rockville, MD 20857.

System Manager: Information Systems Specialist, Office of Program and Policy Development, Bureau of Primary Health Care, HRSA, 4350 East West Highway, Room 7-2B3, Rockville, MD 20857.

System Manager: Correspondence Coordinator, Office of the Director, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18-05, Rockville, MD 20857.

* * * * *

[FR Doc. 93-28075 Filed 12-28-93; 8:45 am]

BILLING CODE 4160-15-M

Agency for Toxic Substances and Disease Registry

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Agency for Toxic Substances and Disease Registry, HHS.

ACTION: Publication of minor change to notice of system of records.

SUMMARY: In accordance with the Office of Management and Budget Circular No. A-130, Appendix I, "Federal Agency

Responsibilities for Maintaining Records About Individuals," the Agency for Toxic Substances and Disease Registry (ATSDR) is publishing the table of contents and a minor change to its notice of system of records.

SUPPLEMENTARY INFORMATION: ATSDR has completed the annual review of its system of records and is publishing below the table of contents and the minor change which affect the public's right or need to know: the clarification of categories of individuals covered by the system.

1. Table of Contents

The following system notice currently maintained by ATSDR was published in the *Federal Register*, 53 FR 30720, August 15, 1988:

09-19-0001 Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances. HHS/ATSDR/DHS.

2. System 09-19-0001 is amended to reflect a clarification of the categories of individuals section of the system:

09-19-0001

SYSTEM NAME:

Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances. HHS/ATSDR/DHS.

Minor alterations have been made to this system notice. The following category is revised in its entirety:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals exposed or potentially exposed to toxic or hazardous substances may include the following: (1) Selected persons living or having lived near a hazardous waste site, including facilities owned or operated by the United States; (2) Persons exposed or potentially exposed to environmental hazards resulting from ingestion of contaminated drinking water, persons exposed to contaminated soil, persons living on mining wastes, persons inhaling toxic substances (all of which may or may not be the result of contamination by a specified waste site); (3) Participants in health outcome studies (including exposure studies,

symptom and disease prevalence studies, cluster investigations), and epidemiologic studies to determine the public health threat of exposure to hazardous or toxic substances; (4) Registry participants with exposures associated with specific chemicals; (5) Participants from sites of emergency activities, and other sites that are the subject of a citizen's petition; (6) Persons working or having worked in response actions at hazardous waste sites or other occupational settings where exposure to hazardous substances occurred. The first five categories of persons above may include children as well as adults.

* * * * *

Dated: October 28, 1993.

Walter R. Dowdle,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 93-27227 Filed 12-28-93; 8:45 am]

BILLING CODE 4160-70-P

Food and Drug Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Publication of minor changes to systems of records notices.

SUMMARY: The Food and Drug Administration (FDA) is publishing this document in accordance with Office of Management and Budget Circular No. A-130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals."

SUPPLEMENTARY INFORMATION: FDA has completed the annual review of its systems of records and is publishing below (1) a table of contents which lists all active systems of records in FDA, and (2) minor changes which affect the public's right or need to know. FDA has deleted one system of records, 09-10-0015, Blood Donors for Tissue Typing Sera and Cell Analysis and Related Research, HHS/FDA/CBER, because this program has been discontinued. All records contained in the system have been destroyed.

Dated: November 8, 1993.

James A. O'Hara III,

Associate Commissioner for Public Affairs.

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09-10-0002 Regulated Industry Employee Enforcement Records, HHS/FDA/OC.

09-10-0003 FDA Credential Holder File, HHS/FDA/OC.

09-10-0004 Communications (Oral and Written) With the Public, HHS/FDA/OC.

09-10-0005 State Food and Drug Official File, HHS/FDA/ORA.

09-10-0007 Science Advisor Research Associate Program (SARAP), HHS/FDA/ORA.

09-10-0008 Radiation Protection Program Personnel Monitoring System, HHS/FDA/CDRH.

09-10-0009 Special Studies and Surveys on FDA-Regulated Products, HHS/FDA/OM.

09-10-0010 Bioresearch Monitoring Information System, HHS/FDA.

09-10-0011 Certified Retort Operators, HHS/FDA/CFSAN.

09-10-0013 Employee Conduct Investigative Records, HHS/FDA/OM.

09-10-0017 Epidemiological Research Studies of the Center for Devices and Radiological Health, HHS/FDA/CDRH.

09-10-0018 Employee Identification Card Information Records, HHS/FDA/OC.

Minor alterations have been made to the following system notice:

09-10-0011

SYSTEM NAME:

Certified Retort Operators, HHS/FDA/CFSAN.

The system location and system manager portions have been revised to reflect organizational changes.

SYSTEM LOCATION:

Division of Hazard Analysis Critical Control Point, (HACCP) Programs (HFS-615), Center for Food Safety and Applied Nutrition, 200 C Street, SW., Washington, DC 20204.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Hazard Analysis Critical Control Point (HACCP) Programs (HFS-615), Center for Food Safety and Applied Nutrition, 200 C Street, SW., Washington, DC 20204.

[FR Doc. 93-28210 Filed 12-28-93; 8:45 a.m.]

BILLING CODE 4160-01-M

Federal Register

**Wednesday
December 29, 1993**

Part III

Department of State

Office of Protocol

**Gifts to Federal Employees From Foreign
Government Sources in Calendar Year
1992; Notice**

DEPARTMENT OF STATE

Office of Protocol

[Public Notice 1923]

Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 1992

The Department of State submits the following comprehensive listing of the

statements which, as required by law, Federal employees filed with their employing agencies during calendar year 1992 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute.

Publication of this listing in the **Federal Register** is required by section 7342(f) of title 5, United States Code, as

added by section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Pub. L. 95-105, August 17, 1977, 91 Stat. 865).

Dated: October 19, 1993.

Richard Moose,
Under Secretary for Management.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 through Dec. 31, 1992

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Flowers: Four dozen red long-stem roses. President to keep personally. Recd: Dec. 23, 1992. Est. value: \$200.	His Excellency Abdul Rahman Bin Fares Al-Khalifa, Ambassador of the State of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Flowers: Large box of cymbidium orchids, purple and white blossoms, five stems to a bunch (10 bunches); from Singapore Orchids PTE. Ltd., Mandai Garden, Singapore. Accepted by other agency/official use. Recd: Dec. 24, 1992. Est. value: \$500.	His Excellency; (and Mrs.) S.R. Nathan, Ambassador of the Republic of Singapore.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Miscellaneous: (1) A set of six leather-bound volumes, "History of Australia," by Prof. Manning Clark; pub. by Melbourne University Press, 1988. Enclosed in a wooden fitted box. (for the President). (2) A quilt called Geckos, of patchwork design of lizard-like animals hand-pieced and based on a Maurice Escher design adapted by Kay Parker; made 1985-1989 from fabric purchased from an Amish quilter in Illinois. Muted colors; 46" 69" (for Mrs. Bush). Archives, Foreign. Recd: Jan. 01, 1992. Est. value: \$1,750.	The Honorable; (and Mrs.) Paul Keating Prime Minister of Australia, Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Misc.: (1) Two leather photograph albums. One contains 50 photos; one contains 41 photos; the majority of the photos are 8" 10"; three photos are inscribed; both albums bear the seal of Australia. (2) Two large albums containing newspaper clippings about the President and Mrs. Bush's visit to Australia; each album is titled "Visit to Australia, Selected Press Clippings" and is 23 1/2" 26". Archives, foreign. Recd: Apr. 30, 1992. Est. value: \$1,695.	The Honorable Paul Keating, Prime Minister of Australia, Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 through Dec. 31, 1992

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Artwork: Needlepoint picture. A multicolored carnival scene depicting people, animals, rides, kites, balloons, etc., in gold-painted wood frame; 28" 39". (for the President). A floral crewelwork picture; displayed in gold-painted wood frame with red fabric liner; 18½" 19½" (for Mrs. Bush). Archives, Foreign. Recd: Mar. 19, 1992. Est. value: \$1,550.	Her Excellency Begum Khaleda Zia, Prime Minister of the Republic of Bangladesh, Bangladesh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: Crystal box. Belgian crystal box made by Val St. Lambert; approx. 4" 6½" 2" (deep); small circlet of twelve stars engraved on lid. Archives, Foreign. Recd: Dec. 24, 1992. Est. value: \$215.	His Excellency Jacques Delors, President, Commission of the European Communities Belgium.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Photograph: Color photograph of President and Mrs. Von Weizsaecker inscribed; 8" 10"; displayed in a blue leather frame bearing the double eagle crest. Archives, Foreign. Recd: Apr. 29, 1992. Est. value: \$75.	His Excellency Richard Von Weizsaecker, President of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Miscellaneous: (1) Silk brocade table runner, blue and gold, fringed two ends; 23¾" 37". (for Mrs. Bush). (2) A photo book on Kyoto, Japanese and English text. (for the President). (3) Four lapel pins commemorating the City of Kyoto. (for the President). (4) Japanese doll, dressed in ceremonial costume, displayed in glass case; doll is approx. 11" high; case is 13" 14½" 16". (for Mrs. Bush). Archives, Foreign. Recd: Jan. 07, 1992. Est. value: \$344.	The Honorable Teiichie Aramaki, Governor Kyoto Prefecture, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Miscellaneous: (1) Color photograph of their Imperial Majesties, the Emperor and Empress of Japan in formal attire, inscribed; displayed in an 11" 14" sterling silver frame with imperial crest at top; enclosed in velvet case. (for President & Mrs. Bush). (2) a copper box decorated with floral and bird design; 3½" 4" 6½". (for Mrs. Bush). (3) An Arita pottery bowl decorated with an overall floral design, 18½" diam. (for Mrs. Bush). Archives, Foreign. Photograph: Twenty 5" 7" color photographs of their Imperial Majesties, the Emperor and Empress of Japan, the President and Mrs. Bush, et al., taken on occasion of the President's trip to Japan; enclosed in a covered lacquered box. Archives, Foreign. Recd: Jan. 8, 1992. Est. value: \$23,650.	Their Imperial Majesties the Emperor and Empress of Japan, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 through Dec. 31, 1992

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Miscellaneous: (1) Book: "Kyoto", a pictorial volume on the ancient city, English text. (for the President). (2) Medallion, silver colored bearing motif of City of Kyoto. (for the President). (3) Incense burner. A metal footed container sparsely decorated with gold-colored design; included are a box of incense, tongs, and other paraphernalia to use with the burner. (for Mrs. Bush). Archives, Foreign. Recd: Jan. 7, 1992. Est. value: \$960.	The Honorable Tomoyuki Tanabe, Mayor of Kyoto Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Photograph: Color photograph of President and Mrs. Roh, inscribed in Korean, displayed in a sterling silver frame with gold emblem at top; photo is 8"x11"; frame is 10"x14½". Contained in velvet covered case. Archives, Foreign. Recd: Jan. 6, 1992. Est. value: \$350.	His Excellency; (and Mrs.) Tae Woo Roh, President of the Republic of Korea, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Consumables: One box of two dozen Korean pears; packed separately in wrapping. Accepted by other agency/official use. Recd: Nov. 20, 1992. Est. value: \$120.	His Excellency Tae Woo Roh, President of the Republic of Korea, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: Bowl and tray. A silver bowl with smaller covered glass caviar bowl inside (silver lid); outer bowl is 7" diam., small bowl is 4" diam. and a silver tray, 10½"x14". By Christofle of France. Included are five gel packs for keeping the caviar cold; three packs are of a multi-colored striped design; two are plain velvet-covered; Archives, Foreign. Flowers: Large mixed arrangement of lilies, snapdragons, quince blossoms, Roses, etc; accepted by other agency/official use. Floral container: A Chinese reproduction blue and gold floral design porcelain jardiniere. Archives, Foreign. Recd: Jan. 11, 1992. Est. value: \$875.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Artwork: Painting. A watercolor titled "Singapore River, 1985," by Aw Tee Hong, signed; double-matted under plexiglass in golden metal frame; image: 20½"x29½"; overall: 30"x38". Archives, Foreign. Recd: Jan. 4, 1992. Est. Value: \$400.	His excellency; (and Mrs.) Chok Tong Goh, Prime Minister of the Republic of Singapore, Singapore.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 through Dec. 31, 1992

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Photograph: Photograph album. A red leather album of 94.5"x7" color photographs of President and Mrs. Bush, et al. during their trip to Singapore; album cover stamped in gold: "State Visit by the President of the United States of America and Mrs. Bush. 3-5 January 1992 Singapore, Presented by the Ministry of Foreign Affairs". Archives, Foreign. Recd: Jan. 23, 1992. Est. value: \$620.	His Excellency S.R. Nathan Ambassador of the Republic of Singapore, Singapore.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: Lamp. A copper lamp on stand. (has an electrical cord only for attaching to a U.S. style plug); 35" high Archives, Foreign. Recd: Feb. 26, 1992. Est. value: \$1,000.	His excellency Frederick Chiluba, President of the Republic of Zambia, Zambia.	Non-Acceptance would cause embarrassment to donor and U.S. Government.
President	Photograph: Photograph album. A black album of 18 color photographs with text commemorating the Security Council Summit Meeting of January 31, 1992. Excellent quality photographs. Archives, Foreign. Recd: Apr. 23, 1992. Est. value: \$510.	His Excellency Boutros Boutros-Ghali Secretary General of the United Nations.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Plaque. Lacquered plaque depicting a ship being tossed on a rough sea; crafted in Fedoskino Village by V. Obukhov, 1991; 9½" 16". * * * * * "Removed from Camp David 1/5/93 for transport to College Station, TX. For use in Laurel office recreation in the Presidential library" * * * * * "Tagged for Archives" * * * * * Archives, Foreign. Recd: Feb. 1, 1992. Est. value: \$500.	His Excellency Boris Yel'tsin, President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Wooden document box. A modern style box, made from cedar, wheel tree, and tupil oak, by Pru Shaw; engraved with a crown motif on underside of hinged lid and attached with an engraved brass presentation plaque; 4" 10" 16". Archives, Foreign. Recd: Jan. 1, 1992. Est. value: \$200.	The Honorable; (and Mrs.) William George Hayden, Governor General of Australia, Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Desk accessory: Box. A circular silver metal all-purpose box, modernistic ribbed design with horizontal handle on lid; by Christofle of Paris, France; 3¼" diam., 3¾" high. Archives, Foreign. Recd: Apr. 22, 1992. Est. value: \$215.	His Excellency Jacques Delors, President, Commission of the European Communities, Belgium.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Glass fish. A handblown glass fish designed in hues of blues, greens, and pinks; crafted by Bermuda Glass Blowing Studio; 6" wide, 12½" long. Archives, Foreign. Recd: May 27, 1992. Est. value: \$240.	The Honorable John W.D. Swan, M.P., Premier of Bermuda; Bermuda.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 through Dec. 31, 1992

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: Painting. A modernistic rendering of an adult female figure holding a baby with a male adult figure standing alongside; by Gil Imana Garron; displayed in black and gold-colored wood frame with linen matting; image: 11½" 16½"; overall: 20½" 25". Archives, Foreign. Recd: Feb. 10, 1992. Est. value: \$4000.	His Excellency Jaime Paz Zamora, President of the Republic of Bolivia, Bolivia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Bucket. A copy of an antique leather fire bucket, by leather works, Nova Scotia; 9" diam., 10" high. Archives, Foreign. Recd: May 20, 1992. Est. value: \$350.	The Right Honorable Brian Mulroney, Prime Minister of Canada, Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing and accessories: Poncho. An Aymara poncho, alpaca wool, in striped colorings of gray, black, white, brown, etc.; fringed on two ends; 54" 78". Archives, Foreign. Recd: May 13, 1992. Est. value: \$337.	His Excellency Patricio Aylwin Azocar, President of the Republic of Chile, Chile.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book: Book, titled "Flora Huayaquilensis," Auctore Johanne Tafalla, Tomus I, Introductio Historica et Adnotationes Ab Eduardo Estrella, Editio Facta Ab Instituto Ad Conservandam Naturam et Ab Horto Regio Matritense, Matritii Anno MCMLXXXIX. (Book is not bound but consists of individual pages of Spanish text and 211 color reproduction plates; contained in a paper-covered slipcase; each plate image is 10" 14"). Archives, Foreign. Recd: Feb. 4, 1992. Est. value: \$350.	His Excellency Rodrigo Borja, President of the Republic of Ecuador, Ecuador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing and accessories: Dilled cotton thornproof fabric of 100% long staple Egyptian cotton; cotton tartan lining; large size. Archives, Foreign. Recd: June 6, 1992. Est. value: \$395.	The Right Honorable John Major, M.P., Prime Minister, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: Silver-plated tray and stand. Approximately 2' X 2' blue hardbound lined case including a drawer with 2' X 1½' silver-plated serving tray imprinted w/ the emblem of a tree 1½' silver-plated stand for use with tray as a serving table. Archives, Foreign. Recd: July 07, 1992. Est. value: \$700.	His Excellency Francois Mitterand, President of the Republic of France, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 through Dec. 31, 1992

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Enameled bronze plate, 10" in diameter; unfinished wooden frame, 16" X 16". Entitled "Good Defeats Evil", it portrays "A sculpture by Georgian born Zurab Tsereteli". The figure on a white horse "Depicts St. George Destroying the Soviet SS-20 and Pershing II missiles." Archives, Foreign. Recd: May 28, 1992. Est. value: \$275.	His Excellency Sviad Gamsakhurdiya, President of the Republic of Georgia, Georgia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Bronze bas-relief plaque depicting 5 Georgian shepherds and two sheep; approximately 9½" in diameter; encased in shadow-box frame lined in blue velvet. Archives, Foreign. Recd: July 8, 1992. Est. value: \$800.	His excellency Eduard Shevardnadze, Chairman, State Council, Georgia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Misc: (1) Black souvenir sports bag w/ Wirtschaftsgipfel Munchen 1992 logo; (2) Junghans quartz-wecker alarm clock; (3) pair rocco sun glasses; (4) German beer mug; (5) box of Deutsche Spitzenweine (2 bottles of German wine); (6) 8" 11" book, "Munchen," by Rudolf Reiser, published by F. Bruckmann KG Munchen, 1991; hardbound w/color-plated cover; (7) 8" 11" book, "Wirtschaftsgipfel Munchen 1992," souvenir documentation by Helmut Reuther. Archives, Foreign. 1975-1991; Hardbound w/slipcase; blk & white color plates; (8) 15" 12" blk satchel w/ logo "Wirtschaftsgipfel Munchen 1992" by Quelle, velcro closure, with additional gifts enclosed; (9) 4" model car, "Audi Cabriolet"; (10) 3" 4" English-German dictionary; (11) Lufthansa plastic watch; (12) cassette disc "Sommer Konzerte, Donau und Altmuhl"; (13) 3.5" computer diskette "Off to Europe," computer game by the German Foreign Office; (14) promotional. Archives, Foreign. Phone card by Telekom; (15) 4" 8" book of Germany; (16) one set of 5 Schwan Stabilo markers and pencils; (17) paperback "Munchen im Juli 1992"; (17) promotional folder of 3 booklets about "Munchen"; (18) Erzgebirge nutcracker soldier, 15" in height; (19) Erzgebirge Christmas Pyramid approximately 2" High; (20) pair of Jena binoculars 10x40 B, luxury model, in red leather case. Archives, Foreign. Recd: July 3, 1992. Est. value: \$714.	His Excellency; Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

*Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 through Dec. 31, 1992

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Misc. (1) Porcelain Bavarian figurine of a lion lettered "President Bush," 12" high; by Nymphenburg; (2) Gift set consisting of a book titled "Bayern" and two compact discs titled "Musical Life in Bavaria". Archives, Foreign. Recd: July 5, 1992. Est. value: \$340.	Dr. (and Mrs.) H.C. Max Streibl, President of the Bavarian Ministry, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Model ship. A wooden replica model of the "Berlin" frigate, the original of which was launched in Holland in 1674 and chartered for Frederick William, the Elector of Brandenburg; primarily handmade over a period of 400 hours; 13" deep, 28" high, 35" long. * * * removed from Camp David 1/5/93 for transport to College Sta., TX, for use in Laurel office recreation in Presidential library * * *. Archives, Foreign. Recd: April 29, 1992. Est. value: \$12,000.	His Excellency Richard Von Weizsaecker, President of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Scrapbook: Five scrapbooks, each containing 40 color photos of President and Mrs. Bush during their visit to Greece in July, 1991 (8" 10"), bound in blue leather with the seal of Greece depicted on the covers. Archives, Foreign. Recd: Jan. 10, 1992. Est. value: \$2375.	His Excellency Constantine Mitsotakis, Prime Minister of the Hellenic Republic, Greece.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: Crystal, bowl. Shamrock motif, scalloped edge, by Tyrone Crystal; 4½" 9". (shamrocks included in "B" record; value: \$2.); Archives, Foreign, Shamrocks. Destroyed. Recd: Mar. 17, 1992. Est. value: \$202.	His Excellency David Andrews, Minister for Foreign Affairs of Ireland, Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Oil lamps. "Set of ancient oil lamp(s)" made of terra cotta w/ varied designs; one "Jewish oil lamp, 1st-2nd cent. C.E.", 2½" 3½"; one "Christian oil lamp, 4th cent. C.E.", 2½" 3¼"; one "Moslem oil lamp, 8th cent. C.E.", 3" 4"; certificate of antiquity by A. Klein Ltd., Jerusalem, Dated 1992. Archives, Foreign. Recd: Nov. 16, 1992. Est. value: \$1,500.	His Excellency Chaim Herzog, President of Israel, Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: Silver bowl and accessories. Ornate silver fruit bowl with floral design and scalloped edges, approx. 10" in diam. Silver reproductions of Israeli fruit include orange, grape cluster, two strawberries on stem, apple, pineapple, fig, and sweetsop; sizes range between 2" to 3" in width and 4" to 7" in length. Archives, Foreign. Recd: Aug. 10, 1992. Est. value: \$1200.	His Excellency Yitzhak Rabin, Prime Minister of Israel, Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 through Dec. 31, 1992

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Flower: One dozen sprays of assorted orchids. Accepted by other agency/official use. Recd: Apr. 27, 1992. Est. value: \$250.	The Honorable Takashi Hiraoka, Mayor of the city of Hiroshima, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book: Book. "The Seasons in the Land of Yamato," a volume of color photographs and Japanese text; cloth-covered; included is a related soft-cover publication titled "Nara Yamatoji." slipcased. Archives, Foreign. Recd: Jan. 7, 1992. Est. value: \$230.	The Honorable Yoshiya Kakimoto, Governor of Nara Prefecture, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Stamps: Two vol. set Japanese commemorative postage stamps, each page with different stamp, description in Japanese and English. Handbound volumes in brocade. One hardbound book covered in brocade w/slipcase. One handbound book of commemorative postage stamps. Nine envelopes, each with one 62 yen stamp. All issued by the ministry of Posts and Telecommunications. (separate stamp included in "B" record; value: \$2.). Archives, Foreign. Stamps: One 62 yen stamp enclosed in folder; President to keep personally coins: Two proof coins commemorating the 20th anniversary of the reversion of Okinawa to Japan: 500 yen each, on one side featuring the State Hall of Shuri Castle, on the reverse, rising dragons; each in velvet presentation case. 40 circulation coins, as described above, each in paper packet; Archives, Foreign. Stamps: One 62 yen stamp and one 500 yen coin commemorating the 20th Anniversary of the Reversion of Okinawa to Japan. Stamp shows Shuri Castle, morning sun and swallows, issued May 15, 1992. Coin features State Hall of Shuri Castle of one side, on reverse, rising dragons. Archives, Foreign. Recd: June 4, 1992. Est. value: \$438.	The Honorable Shin Kanemaru, Vice President, Liberal Democratic Party of Japan, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: Lacquered box. A black lacquered box depicting two cranes flying over a marshy area; crafted from Wajima in Ishikawa Prefecture; 6"6½"10½". Archives, Foreign. Recd: Jan. 8, 1992. Est. value: \$3,000.	His Excellency Kiichi Miyazawa, Prime Minister of Japan, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 through Dec. 31, 1992

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Body warmers. Five boxes of gel type packets used for stiff muscles, etc. Each box contains 24 packets and each packet contains 10 individual body warmers. Item is activated by natural body heat. GSA. Recd: Jan. 9, 1992. Est. value: \$400.	His Excellency Kiichi Miyazawa, Prime Minister of Japan, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Photograph: Two large photograph albums. Bound in heavy blue cloth with gold floral design at top center, front cover; gilt edges, approx. 14" 18" in size, end-papers in yellow with floral design faintly outlined. Exact duplicates, except one copy, which has a fly-leaf, each album contains 55 color photographs commemorating the state visit of President and Mrs. Bush to Japan January 7th to 10th, 1992; gift of "Government of Japan." Archives, Foreign. Recd: June 26, 1992. Est. value: \$1,590.	His Excellency Kiichi Miyazawa, Prime Minister, Japan, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Hobbies: Camera. "Compact Cardia 'BYU-N,' a multiexposure rapid-sequence camera." Battery operated, approx. 3" 7", black. The camera delivers a set of eight rapid-sequence photos "on two panorama format (13 36mm) frames"; instructions in Japanese; separate instructions in English included (illus., 14 p.). Archives, Foreign. Recd: July 2, 1992. Est. value: \$230.	His Excellency Kiichi Miyazawa, Prime Minister, Japan, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables: 3 boxes of apples from Aomori Prefecture. The apples are known as "Ochinai Ringo", apples that did not fall—because they stayed on their trees during a fierce typhoon. They are considered lucky, and therefore an appropriate gift for students about to take exams. Or, in this case, a politician before an election. Approx. 33 apples in each box. Accepted by other agency/official use. Recd: Feb. 3, 1992. Est. value: \$743.	The Honorable Sakari Ogasawara, Mayor of Fujisaki, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Painting. A painting of six doves symbolizing the world's six continents as well as mankind's longing for world peace; by Issa Kobayashi; image: 24" 29"; overall: 30½" 35". Displayed under glass in aluminum frame. Archives, Foreign. Recd: Jan. 9, 1992. Est. value: \$2,000.	Mr. Yoshihiko Tsuchiya, Member of the House of Councillors, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 through Dec. 31, 1992

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Household: Vase. A blue glass vase, decorated predominately in gold and silver-colored Arabic calligraphy denoting various general excerpts from the Koran (those recited when praying); signed on underside by craftsman Abdul Athalem Abu Al Saud, 1992; 12" high. Archives, Foreign. Recd: Mar. 18, 1992. Est. value: \$210.	His Majesty Hussein I, King of the Hashemite Kingdom of Jordan, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Misc. (1) Wine container. A leather wine flask. (2) Book. A copy of "In the Land of the Seven Rivers," a color photograph book on flora and fauna, Russian text. (3) Wristwatch. A watch with a sketch of President Nazarbayev and his name on the dial. Archives, Foreign. Recd: May 19, 1992. Est. value: \$95.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan, Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Model of a turtle ship. A metal model of a turtle ship, the first iron-clad ship in the world; approx. 10" 18" 18"; displayed in a plaqued glass case including a separate plaque lettered with the background information on the original ship; Archives, Foreign. Audio/visual recording: cassette recordings. Three tapes of speeches; one by President Bush on February 27, 1989; one by Vice-President Bush on April 26, 1982; one by President Bush on January 6, 1992. Archives, Foreign. Recd: Jan. 6, 1992. Est. value: \$237.	His Excellency Jyun Kyu Park, Speaker of the National Assembly, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Tennis equipment: Tennis racquet. A cyclone power and technic tennis racquet, high modulus graphite, ER-927, by Esquire; inscribed and enclosed in its own nylon case. Archives, Foreign. Recd: Jan. 5, 1992. Est. value: \$285.	His Excellency Tae Woo Roh, President of the Republic of Korea, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: Vase. An open-mouth celadon vase with an overall floral design; 11" diam., 14" high; contained in a fabric-covered chest. Archives, Foreign. Recd: Jan. 6, 1992. Est. value: \$1,000.	His Excellency Tae Woo Roh, President of the Republic of Korea, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Floral arrangement. Wicker basket filled with irises, pink lilies, and anthurium. Accepted by other agency/official use. Recd: Nov. 20, 1992. Est. value: \$150.	His Excellency Tae Woo Roh, President of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Large floral arrangement of lilies, roses, iris, heliconia, and tropical plants and flowers in basket. Accepted by other agency/official use. Recd: June 16, 1992. Est. value: \$250.	His Excellency Shaikh Saud Nasir Al-Sabah, Ambassador of the State of Kuwait, Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 through Dec. 31, 1992

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: Figure. A sterling silver sculpture of a fish; 5"5½"6½". Displayed in a plexiglass case Archives, Foreign. Recd: Feb. 27, 1992. Est. Value: \$800.	His Excellency Carlos Salinas De Gortari, President of the United Mexican States, Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: Silver candlesticks. Two sterling silver/granite candlesticks; modern design of arched silver scalloped base over granite, 9" base; 3"6". Archives, Foreign. Recd: Oct. 7, 1992. Est. value: \$200.	His Excellency Carlos Salinas De Gortari, President of the United Mexican States, Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables: Fauchon chocolates, Paris, France, in two separate quantities, one group in assorted sizes and shapes (107 pieces), the other, similar chocolates individually wrapped in Fauchon foil paper (121 pieces); Accepted by other agency/official use. Two large boxes, Fauchon, Paris, France (contained candy described in record A): One round box, 21" in diameter, black stripes against pink and green background; one oblong box, 16"20", decorated in multicolored floral design. First Lady to keep personally. Recd: June 12, 1992. Est. Value: \$286.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Reproduction of pre-Columbian Huaca entitled "El Condor". 24 K gold plate, approx. 4"5" and set inside ornate gold frame, 16"16", against black velvet background. Huaca is "hand-made, using * * * the same method that the ancient Indians used * * *"—CF. Reprosa (encl. leaflet). Inscription to President Bush from Pres. Endara on brass plate (in Spanish) dated June 11, 1992, beneath Huaca. Archives, Foreign. Recd: June 11, 1992. Est. value: \$250.	His Excellency Guillermo Endara (Galimany), President of the Republic of Panama, Panama.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Misc. (1) Bronze metal plaque depicting the bust of J. Padereswki; 7" round; designed by Edward Gorol, medalist. (2) Copy No. 2 reprint of 400, of an original map in the cartographic collection of the Library of Polish Academy of Sciences in Cracow depicting the Map of the Americas from 1785; on canvas; size 38"50"; contained in a portfolio Archives, Foreign. Recd: July 5, 1992. Est. Value: \$215.	His excellency; (and Mrs.) Lech Walesa, President of Poland, Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 through Dec. 31, 1992

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Household: Porcelain bowl. A white porcelain covered bowl, decorated with a butterfly and floral design, adapted from a Chinese bowl from the Kang Hsi period (1662–1772); Fu dog figure attached to lid; made in Portugal by Mottahedeh; 9" diam., 10" high Archives, Foreign. Recd: Apr. 22, 1992. Est. value: \$425.	His Excellency Anibal Cavaco Silva, Prime Minister of Portugal, Portugal.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Painted and lacquered box, depicting three male warriors on horseback; red interior; 3½"×8"×10½". Archives, Foreign. Recd: Mar. 10, 1992. Est. value: \$500.	The Honorable Eduard Rossel, Governor of Yekaterinburg, Russian Federation (Russia).	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: Bra's vase covered in silver filigree. Silver fashioned in intricate floral shapes, 6" in diameter, approx. 14" deep. Heavy plastic case lined in red velvet and gray satin. Archives, Foreign. Recd: June 16, 1992. Est. value: \$500.	His Excellency Boris Yeltsin, President of the Russian Federation, Russian Federation (Russia).	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Large arrangement of king protea, fresh tulips, tuber roses, azalea, yellow oncidium orchids, ginger, etc., in wicker basket. Accepted by other agency/official use. Recd: Jan. 13, 1992. Est. value: \$300.	Fahd Bin Abd Al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Large arrangement of bird of paradise, orchids, African violets, anthurium, heather, ginger, etc. in a non-archivable ceramic container. Accepted by other agency/official use. Recd: Jan. 13, 1992. Est. value: \$200.	His Royal Highness Abdullah Bin Abdulaziz Al-Saud, Crown Prince of the Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Large arrangement of bird of paradise, tulips, heather, orchids, ginger, pineapple, etc., in a non-archivable ceramic bowl. Accepted by other agency/official use. Recd: Jan. 13, 1992. Est. value: \$100.	His Royal Highness Prince Bandar Bin Sultan Bin Abdulaziz, Ambassador of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: Perfumer. 19th century copy of a piece from the dressing table set presented by Madrid City Council to Queen Maria Isabel De Braganza on the occasion of her marriage to King Fernando VII; gilded silver; 2½" deep, 4" high, 5" long; displayed in a black leather case with brass fittings; key to box in leather pouch. Archives, Foreign. Recd: Mar. 2, 1992. Est. value: \$350.	His Excellency Felipe Gonzalez (Marquez), President of the Government of Spain, Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: Crystal stemware. 24 claret glasses with stems gilded in 22 karat gold, designed by Gunnar Cyren for the 90th anniversary of the Nobel Foundation; produced by Orrefors. Archives, Foreign. Recd: Feb. 20, 1992. Est. value: \$1800.	His Excellency Carl Bildt, Prime Minister of Sweden, Sweden.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 through Dec. 31, 1992

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Golfing equipment: Golf putter. A "deity" custom made jade putter. Archives, Foreign. Recd: Jan. 29, 1992. Est. value: \$750.	The Honorable Teng-Hui Lee, President of the Republic of China, Taiwan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Free form brass sculpture, 25" high, on 7" square marble base; lettered in French from His Excellency General Eyadema, Togo; contained in a gold-tooled black leather box with a 3" gold-colored medallion depicting the Seal of Togo; key-locked. Archives, Foreign. Recd: July 17, 1992. Est. value: \$500.	His Excellency General Gnassingbe Eyadema, President of the Republic of Togo, Togo.	Non-acceptance would cause embarrassment to donor and J.S. Government.
President	Household: Bowl. Silver (900) fluted bowl with gold bas relief floral design around edges; 6" high, 6" diam. across open mouth. And a matching tray, 12½" diam.; contained in a red-velvet chest (for the President). Archives, Foreign. Recd: Feb. 11, 1992. Est. value: \$650.	His Excellency (and Mrs.) Suleyman Demirel, Prime Minister of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Hand-painted plate. Enamel and gold in two layers of crystal; 9" in diameter; signed and dated by artist: "Feliz Denizer 039011"; includes wooden stand; all enclosed within velvet case, 10"10". Archives, Foreign. Recd: May 28, 1992. Est. value: \$200.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: Pin. A limited edition (13 of 100) metal sculpted brooch of a little pygmy possum, cast by the lost wax technique, by Ruth Waterhouse; displayed on a velvet background in a silver metal frame; 3¼"5½". Archives, Foreign. Recd: Jan. 1, 1992. Est. value: \$100.	The Honorable; (and Mrs.) William George Hayden, Governor General of Australia, Australia.	Non-Acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Book: Book "Icones de Bulgarie", in Bulgarian text, published by Sofia Press, 1989. This is a rare book, per Ingeborg Baum, Library of the Supreme Council. Archives, Foreign. Recd: Mar. 2, 1992. Est. value: \$350.	Dr. Elena Georgieva-Dimitrova (wife of the Prime Minister), Bulgaria.	Non-Acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: Figure. A silver (coin silver) turkey on a raised base; delicately engraved and designed; used by Chileans to hold herbal tea and sip it through an accompanying silver straw; 7" wide, 11" high. Archives, Foreign. Recd: May 13, 1992. Est. value: \$250.	Mrs. Patricio Aytwin Azocar (wife of the President of the Republic of Chile), Chile.	Non-Acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 through Dec. 31, 1992

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Photograph: Photograph Album. Fine leather album, 10"12", with German eagle outlined on front cover; 35 col. photos on 30 leaves with covering guardsheets, 2 fly-leaves at front. Commemorates the visit of Mrs. Bush at Economic Summit, Munich, July 5-7, 1992. Archives, Foreign. Recd: July 29, 1992. Est. value: \$550.	Mrs. Helmut Kohl (wife of the Chancellor of the Federal Republic of Germany), Federal Republic of Germany.	Non-Acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: Wooden statute of Christ in chains, carved by artist Herbert Haseidl, Oberammergau; 9" high. Archives, Foreign. Recd: July 5, 1992. Est. value: \$75.	Dr.; (and Mrs.) H.C. Max Streibl, President of the Bavarian Ministry, Federal Republic of Germany.	Non-Acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: Candelabrum. A white porcelain two socketed candleholder, decorated in gold and multicolored floral motifs and topped with a figurine of a young child reading: 10 3/4"13 3/4"; by KPM Royal Berlin Porcelain; numbered 64 on underside. Archives, Foreign. Recd: Apr. 29, 1992. Est. value: \$1,100.	His Excellency Richard Von Weizsaecker, President of the Federal Republic of Germany, Federal Republic of Germany.	Non-Acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: Sewing box. A portable sewing box with five drawers and a hinged top section with a "secret compartment" inside; contains a pin cushion or "haribako", three thread winders, and a needle threader; crafted of mulberry wood in a medium brown polished finish; 9"11 1/2"14". Archives, Foreign. Recd: Jan. 8, 1992. Est. value: \$1,500.	Mrs. Kiichi Miyazawa (wife of the Prime Minister of Japan), Japan.	Non-Acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and Accessories: Braided gold-like decoration for traditional Korean dress; "MADUP" to hang on wall, per Korean desk at state. Archives, Foreign. Recd: Mar. 6, 1992. Est. value: \$300.	Mrs. Young Sam Kim (wife of the chairman) (The Democratic Liberal Party), Republic of Korea.	Non-Acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Tennis equipment: Tennis racquet. A cyclone power and technic tennis racquet, high modulus graphite, ER-927, by Esquire; inscribed and enclosed in its own nylon case; enclosed in a separate nylon carrying case. Archives, Foreign. Recd: Jan. 5, 1992. Est. value: \$285.	His Excellency Tae Woo Roh, President of the Republic of Korea, Republic of Korea.	Non-Acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 through Dec. 31, 1992

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Artwork: Boat. Handcarved ebony fishing vessel, lettered "Lake Malawi"; two male figures are seated inside boat holding a net with three wooden fish while another male figure is rowing the boat. 13" H., 19" L; Archives, Foreign. Consumables: Macadamia nuts. 15 boxes of plain macadamia nuts, each box approx. one pound. Accepted by other agency/official use. Recd: Feb. 20, 1992. Est. value: \$400.	Mama Cecilia Tamanda Kadzamura, official Hostess of Malawi, Malawi.	Non-Acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Consumables: Five bottles of toilet water from Morocco, each spray bottle has a gold-colored top and bears the Kings' facsimile signature; contained in a compartmentalized leatherette and gold-stamped case, key-locked. Archives, Foreign. Recd: June 8, 1992. Est. value: \$700.	His Majesty Hassan II, King of Morocco, Morocco.	Non-Acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Flowers: Floral arrangement. Large Assortment of several varieties in pastel colors; accepted by other agency/official use. Household: Reproduction of Chinese porcelain vase; multi-colored flowers and figures; 17" in diameter, 14" depth, 2" rim. Gift delivered from mail room. Archives, Foreign. Recd: June 8, 1992. Est. value: \$550.	His Majesty Hassan II King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: Six crystal fruit bowls; 5" wide and 2" deep; hand cut lead crystal by Julia; made in Poland. Archives, Foreign. Recd: July 5, 1992. Est. Value: \$180.	His Excellency; (and Mrs.) Lech Walesa, President of Poland, Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: Bowl. Frosted crystal bowl depicting a leaf design, by Vas Vitreum; produced by Svenskt Glas, Stockholm; 7" H., 10½" diam. Archives, Foreign. Recd: Feb. 20, 1992. Est. value: \$666.	Mrs. Carl Bildt (wife of the Prime Minister of Sweden), Sweden.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: Candy dish. A silver (900) lidded container decorated with 18 kt. gold floral design; 6" diam; contained in a red velvet case. Archives, Foreign. Recd: Feb. 11, 1992. Est. value: \$250.	Mrs. Suleyman Demirel (wife of the Prime Minister of the Republic of Turkey), Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James A. Baker, III, Chief of Staff and Senior Counselor to the President.	Book, titled "His Royal Highness The Prince of Wales Watercolours", published by Little, Brown and Company, London; A collection of the Prince of Wales' amateur paintings. Since the book was valued at \$35. It was retained by Mr. Baker personally. And the Ginger Jar \$335.00 was turned over to the National Archives for possible placement in the future Bush Presidential Library and Museum; Presidential staff to keep personally. Royal Crown Derby English Bone China Ginger Jar #1128 L III, in the "Olde Imari" pattern. Because the Ginger Jar was archival in nature, it was turned over to the National Archives for possible future in the Bush Presidential Library and Museum. Archives/staff gift special. Recd: Dec. 18, 1992. Est. value: \$365.	The Right Honorable John Major, M.P., Prime Minister, United Kingdom, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Michael J. Boskin, Chairman of the Council of Economic Advisers.	Jewelry: Set of coral and biwa pearls for Mrs. Boskin. Pearls valued at \$150. Were retained personally by Mrs. Boskin. The additional gift of the enamel plate valued at \$75. Was turned over to GSA as excess Government property; Presidential staff to keep personally. Household: Cloisonne enamel plate with wooden stand. Plate valued at \$75. Was turned over to GSA as excess Government property. The pearls valued at \$150. Were retained by Mrs. Boskin personally. GSA. Recd: June 18, 1992. Est. value: \$225.	His Excellency; (and Mrs.) Fredrick F. Chien, Minister of Foreign Affairs, People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Douglas A. Davidson, Assistant Press Secretary.	Desk accessory: Black fountain pen, made by Mont Blanc. GSA. Recd: Jan. 7, 1992. Est. value: \$345.	His Excellency Suleiman Abd Al-Awadi, Kuwait Foundation for the Advancement of Sciences, Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Catherine S. Fenton, Deputy Social Secretary.	Household: Meissen Porcelain Bowl. White with yellow flower in the center, gilt rim; approx. 8" in diameter. Presidential staff to keep personally. Recd: Apr. 28, 1992. Est. value: \$200.	His Excellency Richard Von Weizsacker, President of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Max Marlin Fitzwater, Assistant to the President and Press Secretary	Mont Blanc Pen Meisterstück No. 149, and Case. GSA. Recd: Jan. 3, 1992. Est. value: \$345.	His Excellency Suleiman Abd Al-Awadi, Kuwait Foundation for the Advancement of Sciences, Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Richard N. Haass, Special Assistant to the President for National Security Affairs.	Lead Crystal artwork of Petra—individually numbered and signed GSA. Recd: Oct. 27, 1992. Est. value: \$300.	Lt. General, Mustafa Abd Al-Karim Qaysi, Director of Jordanian Intelligence, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 through Dec. 31, 1992

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Deputy Assistant to the President for National Security Affairs.	Artwork: Hand-embroidered picture depicting a floral motif, made of various colors of thread; approx. 30" square, in a gold-colored wooden frame. Gift ret'd by recipient, not interested in official display; it will be turned over to GSA as Government property. GSA. Recd: Mar. 23, 1992. Est. value: \$250.	His Excellency Rahman Ziaur, Prime Minister of Bangladesh, Bangladesh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Deputy Assistant to the President for National Security Affairs.	Sterling silver cigarette box with wooden lining. Not permissible, item must be turned over to GSA as excess Government property. GSA. Recd: Nov. 2, 1992. Est. value: \$250.	Lt. Gen. Mustafa Abd Al-Karim Qaysi, Director, Jordanian General Intelligence Directorate, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Deputy Assistant to the President for National Security Affairs.	Pakistani carpet depicting a Middle Eastern motif and medallion in the center; approx. 4'1"x6'2". On official display in recipient's home. Recipient would like to purchase this gift when official display ends. Paperwork being prepared by M. Houston for GSA regarding the purchase. GSA will contact Admiral Howe directly when they have completed their action; GSA. Women's purse, cordovan-colored with gold-colored metal emblem lettered "Paris, Roma, Tokyo". Recipient will retain this part of the gift personally as it is below the \$200. Value limitation. Presidential staff to keep personally. Recd: Jan. 7, 1992. Est. value: \$430.	General Asif Nawaz, Chief of Army Staff of Pakistan, Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Brent Scowcroft, Assistant to the President for National Security Affairs.	Weapons: Defense revolver, 357 magnum, model "MR 73", with a wooden handle, made in France Manurhin. GSA office of Contracting and Prop. Mgmt. has ret'd papers stating that it was released to the Smithsonian Institution as a museum specimen and it cannot be sold or traded by that institution for other specimens. Oder #333131-2U-163, 7-22-92. GSA. Recd: Feb. 5, 1992. Est. value: \$1122.	His Excellency Pierre Joxe, Minister of Defense of the French Republic France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Brent Scowcroft, Assistant to the President for National Security Affairs.	Set of bowls and spoons, made of low quality silver. The set contains a single large bowl, approx. 8" in diameter, six bowls 4" in diameter. Six spoons, and a large serving spoon; GSA. Weapons: Small dagger with a wooden sheath, in a wooden case; both are of primitive quality. Presidential staff to keep personally. Recd: Apr. 7, 1992. Est. value: \$320.	His Excellency Sharad Pawar, Minister of Defense, India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Brent Scowcroft, Assistant to the President for National Security Affairs.	Vase, white/brown hand carved marble vase, 4"x13/4". Presidential staff; for official use/display. Recd: Sep. 22, 1992. Est. value: \$300.	His Excellency Aleksandr N. Chokhin, Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 through Dec. 31, 1992

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Samuel Knox Skinner, former Chief of Staff to the President.	Photo album commemorating Mr. Skinner's visit to Israel; vinyl with several color photographs inside. Photographs are 8"x10". Silver and gold-plated menorah. GSA. Recd: Jan. 22, 1992. Est. value: \$225.	His excellency Moshe Katsav, Transport Minister of Israel, Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Unknown Unknown, staff member unknown.	Book: Fifty-seven paperback books of photographs of Nara Prefecture (center of Japan) and information in Japanese and English text. GSA. Recd: Jan. 1, 1992. Est. value: \$570.	The Honorable Yoshiya Kakimoto, Governor of Nara Prefecture, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

Parameter names	Current values	Interpretation of the parameters
Reporting year	1993	Year specified for record selection. This is not a reprint of an earlier year.
Report reprint	No	
Printing format	Final	Report will print in a final format.
Substitute for rare	Indeterminable	This word will replace rare in the report text.
Update file	No	Gifts database will not be updated.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT

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President	Household: Bronze figure. "Danseuse Espagnole" (Spanish Dancer), by Degas; reproduction from the Jeu De Paume Museum, Paris; Approx. 8"x16". Archives, Foreign. Recd: Jan. 3, 1993. Est. value: \$1,200.	His Excellency Francois Mitterrand, President of the French Republic, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Misc. (1) Handcrafted wooden triptych. Panel 1 portrays Pres. Bush & Yeltsin, Wash., DC.; #2, Columbus, Spanish monarchs, Map of New World (both panels approx. 9"x17"); #3, Washington, Franklin, Jefferson, & Lincoln (approx. 17"x23"); Wooden frame for triptych, 28"x50" (hinged center), honors 500th anniv., discov. of America. (2) Lge. vinyl suitcase encloses all, incl. tools. (3) Samovar and tray (Chrome & Enamel) in felt-lined wooden/iron trunk; 18"x25". Archives, Foreign.	His excellency Boris Yeltsin, President of the Russian Federation, Russian Federation (Russia).	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, est. value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Desk accessory: Parker Pen. Black w/gold, approx. 6" long; used to sign the START-II Treaty; wooden case w/brass plate portrays U.S. and Russian flags in enamel, inside lid, w/ facsim. Signatures of the two presidents; Brass plate outside, center lid, engraved, "January, 1993". Metal in "Top of Pen is From the U.S. Pershing and Soviet SS20 Nuclear Missiles, Fused Together, Symbolizing an End to the Nuclear Arms Race." 2 ink cartridge refills enclosed. Houston office. Recd: Jan. 3, 1993, Est. value: \$890.		
	Gold replica. "Replica of an Ancient Fortress of the Royal Family. Made of 24 Karat Gold, the piece weighs 88 kilos and its dimensions are 4"x4"x16". The fortress is encased in a green display case and was shipped in a wooden crate." Archives, Foreign. Recd: Jan. 3, 1993. Est. value: \$1,400,000.	His Royal Highness Fahd Bin Abd Al-Aziz Al Sa'ud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: Tea set. Four pieces of "Gzhel" pottery, hand-made in Russia from ancient design; white w/delft blue floral pattern. Creamer in fish shape w/"tail" forming handle, 3"x7 1/2" incl. lid; single candelabra for two candles, horses' heads facing outward, 6"x7"; bowl has single handle w/decorative dog at top, lid w/2 children back to back 5 1/2"x8 1/2" incl. lid; large tea-pot in circular cone shape (hollow at center), 10 1/2"x14", incl. lid. Archives, Foreign. Recd: Jan. 3, 1993, Est. value: \$275.	Mrs. Boris Yeltsin (wife of) President of the Russian Federation, Russian Federation (Russia).	Non-acceptance would cause embarrassment to donor and U.S. Government.

UNITED STATES SENATE

Report of Tangible Gifts—Calendar Year 1992

Name and title of persons accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Howard M. Metzenbaum, U.S. Senator.	Pakistani Rug, Rec'd November 15, 1992; Est. Value \$400; Disposition: Display in Senator's Office.	Government of Pakistan, Chief of Army Staff, Asif Nawaz.	Refusal would likely cause offense or embarrassment.
Howard M. Metzenbaum, U.S. Senator.	Pakistani Rug, Rec'd November 15, 1992; Est. Value \$200; Disposition: Display in Senator's Office.	Government of Pakistan, Senate Chairman, Wasim Sajjad.	Refusal would likely cause offense or embarrassment.

UNITED STATES SENATE—Continued
Report of Tangible Gifts—Calendar Year 1992

Name and title of persons accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Paul Simon, U.S. Senator	Pakistani Rug, Rec'd November 15, 1992; Est. Value \$400; Disposition: Display in Senator's Office.	Government of Pakistan, Chief of Army Staff, Asif Nawaz.	Refusal would likely cause offense or embarrassment.
Paul Simon, U.S. Senator	Pakistani Rug, Rec'd November 15, 1992; Est. Value \$200; Disposition: Display in Senator's Office.	Government of Pakistan, Senate Chairman, Wasim Sajjad.	Refusal would likely cause offense or embarrassment.

UNITED STATES SENATE
Report of Travel or Expenses of Travel—Calendar Year 1992

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
David L. Boren, U.S. Senator	Transportation between Beijing and Shanghai, December 3, 1992.	Government of China	Nonacceptance would cause donor embarrassment.
Molly Boren, spouse of Senator Boren.	Transportation between Beijing and Shanghai, December 3, 1992.	Government of China	Nonacceptance would cause donor embarrassment.
Hank Brown U.S. Senator	Transportation in country, April 24-25, 1992.	Government of Laos	Nonacceptance would cause donor embarrassment.
Dino Carluccio, Deputy Staff Director, Select Committee on POW/MIA Affairs.	Transportation in country, April 24-25, 1992.	Government of Laos	Nonacceptance would cause donor embarrassment.
Dino Carluccio, Deputy Staff Director, Select Committee on POW/MIA Affairs.	Transportation on December 19-21, 1992; Lodging and food on December 19-20, 1992.	Government of North Korea	Nonacceptance would cause donor embarrassment.
William Codinha, Counsel, Select Committee on POW/MIA Affairs.	Transportation in country, April 24-25, 1992.	Government of Laos	Nonacceptance would cause donor embarrassment.
Janice Demers, Personal Assistant to Senator Pell.	Transportation between Beijing and Shanghai, December 3, 1992.	Government of China	Nonacceptance would cause donor embarrassment.
Deborah DeYoung, Communications Director, Select Committee on POW/MIA Affairs.	Transportation in country, April 24-25, 1992.	Government of Laos	Nonacceptance would cause donor embarrassment.
Dave Durenberger, U.S. Senator ..	Transportation in country, July 9, 1992.	Government of Turkey	Nonacceptance would cause donor embarrassment.
John Erikson, Minority Staff, Select Committee on POW/MIA Affairs.	Transportation in country, April 24-25, 1992.	Government of Laos	Nonacceptance would cause donor embarrassment.
Rick Evans, Administrative Assistant to Senator Durenberger.	Transportation in country, July 9, 1992.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Richard Fieldhouse, Legislative Assistant to Senator Levin.	Transportation between Beijing, Shengdu, Lhasa and Shanghai, December 3-5, 1992.	Government of China	Nonacceptance would cause donor embarrassment.
Charles E. Grassley, U.S. Senator	Transportation in country, April 24-25, 1992.	Government of Laos	Nonacceptance would cause donor embarrassment.
Tom Harkin U.S. Senator	Food, lodging, and transportation in Moscow, May 14-19, 1992.	Government of Russia	Nonacceptance would cause donor embarrassment.
Ruth Harkin, spouse of Senator Harkin.	Food, lodging and transportation in Moscow, May 14-19, 1992.	Government of Russia	Nonacceptance would cause donor embarrassment.
Thomas Hohenthanner, Legislative Assistant to Senator Pressler.	Transportation in country, January 17, 1992.	Government of India	Nonacceptance would cause donor embarrassment.
Thomas Hohenthanner, Legislative Assistant to Senator Pressler.	Transportation in country, January 19, 1992.	Government of Sri Lanka	Nonacceptance would cause donor embarrassment.
John F. Kerry, U.S. Senator	Transportation in country, April 24-25, 1992.	Government of Laos	Nonacceptance would cause donor embarrassment.
Richard Kessler, Professional Staff Member, Foreign Relations Committee.	Transportation between Beijing and Shanghai, December 3, 1992.	Government of China	Nonacceptance would cause donor embarrassment.

UNITED STATES SENATE—Continued

Report of Travel or Expenses of Travel—Calendar Year 1992

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Tom Lang, Investigator, Select Committee on POW/MIA Affairs.	Transportation in country, April 24-25, 1992.	Government of Laos	Nonacceptance would cause donor embarrassment.
Carl Levin, U.S. Senator	Transportation between Beijing, Shengdu, Lhasa and Shanghai, December 3-5, 1992.	Government of China	Nonacceptance would cause donor embarrassment.
Barbara Levin, spouse of Senator Levin.	Transportation between Beijing and Shanghai, December 3, 1992.	Government of China	Nonacceptance would cause donor embarrassment.
John McCreary, Investigator, Select Committee on POW/MIA Affairs.	Transportation on December 19-21, 1992; Lodging and food on December 19-20, 1992.	Government of North Korea	Nonacceptance would cause donor embarrassment.
Christopher A. McLean, Legal Counsel & Legislative Assistant to Senator Exon.	Helicopter transportation around Hong Kong, April 14, 1992.	Government of Hong Kong	Nonacceptance would cause donor embarrassment.
Zach Messitte, Press Spokesman, Intelligence Committee.	Transportation between Beijing and Shanghai, December 3, 1992.	Government of China	Nonacceptance would cause donor embarrassment.
Claiborne Pell, U.S. Senator	Transportation between Beijing, Shengdu, Lhasa and Shanghai, December 3-5, 1992.	Government of China	Nonacceptance would cause donor embarrassment.
Nuala Pell, spouse of Senator Pell	Transportation between Beijing and Shanghai, December 3, 1992.	Government of China	Nonacceptance would cause donor embarrassment.
Larry Pressler, U.S. Senator	Transportation in country, January 17, 1992.	Government of India	Nonacceptance would cause donor embarrassment.
Larry Pressler, U.S. Senator	Transportation in country, January 19, 1992.	Government of Sri Lanka	Nonacceptance would cause donor embarrassment.
Charles S. Robb, U.S. Senator	Transportation in country, April 24-25, 1992.	Government of Laos	Nonacceptance would cause donor embarrassment.
Robert Smith, U.S. Senator	Transportation on December 19-21, 1992; Lodging and food on December 19-20, 1992.	Government of North Korea	Nonacceptance would cause donor embarrassment.
Robert Smith, U.S. Senator	Transportation in country, April 24-25, 1992.	Government of Laos	Nonacceptance would cause donor embarrassment.
Christopher Straub, Professional Staff Member, Intelligence Committee.	Transportation between Beijing and Shanghai, December 3, 1992.	Government of China	Nonacceptance would cause donor embarrassment.
C.E. Thomas, Legislative Assistant to Senator Harkin.	Food and lodging in Moscow, May 15-19, 1992.	Government of Russia	Nonacceptance would cause donor embarrassment.
Barry Valentine, Majority Staff, Select Committee on POW/MIA Affairs.	Transportation in country, April 24-25, 1992.	Government of Laos	Nonacceptance would cause donor embarrassment.
Sally Walsh, Deputy Director, Office of Interparliamentary Services.	Transportation in country, April 24-25, 1992.	Government of Laos	Nonacceptance would cause donor embarrassment.
Daniel G. Webber, Press Secretary to Senator Boren.	Transportation between Beijing, Shengdu, Lhasa and Shanghai, December 3-5, 1992.	Government of China	Nonacceptance would cause donor embarrassment.
Frances Zwenig, Chief of Staff, Select Committee on POW/MIA Affairs.	Transportation in country, April 24-25, 1992.	Government of Laos	Nonacceptance would cause donor embarrassment.

AGENCY: DEPARTMENT OF THE AIR FORCE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Gen. Jimmie V. Adams, Commander in Chief, Pacific Air Forces, Hickam Air Force Base, HI.	Eight pillows. Recd: Mar. 31, 1992. Est. Value: \$250. On official display in the CINCPACAF's quarters, Hickam Air Force Base, HI.	General and Mrs. Akio Suzuki, Chief of Staff, Air Staff Office, Japan Air Self Defense Forces.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF THE AIR FORCE—Continued
Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mr. Robert Bauerlein, Deputy Under Secretary of the Air Force.	Brass ship's clock. Recd: Dec. 7, 1992. Est. Value: \$500. On official display in room 4E334, Pentagon, Office of the Deputy Under Secretary of the Air Force.	Admiral Liu, CJCS, Taiwan Air Force.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Gen. Ronald R. Fogleman, Commander, Air Mobility Command, Scott Air Force Base, IL. ¹	Celadon vase. Recd: June 25, 1992. Est. Value: \$400 to \$450. On official display at the Headquarters Building, 7th Air Force, Osan Air Base, Korea.	General Han, Chu Sok, Republic of Korea Air Force Chief of Staff.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. Anne N. Foreman, Under Secretary of the Air Force.	2'4" X 4'2" Pakistani Carpet. Recd: July 23, 1992. Est. Value: \$350. Awaiting disposition with GSA for turn-in.	Air Chief Marshall Farooq, Pakistani Chief.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Major Gen. Billy J. McCoy, Commander, Lackland Training Center, Lackland Air Force Base, TX.	Rado Analog wristwatch with seal of Saudi Arabia on watch face. Recd: Oct. 13, 1992. Est. Value: \$600. On official display at Headquarters, Lackland Training Center, Lackland Air Force Base, TX.	Lt. Col. Hamad, Saudi Arabian liaison officer at the Defense Language Institute, English Language Center, Lackland Air Force Base, TX.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Major General Billy J. McCoy, Commander, Lackland Training Center, Lackland Air Force Base, TX.	Decorated gown. Recd: Oct. 13, 1992. Est. Value: \$150. On official display at Headquarters, Lackland Training Center, Lackland Air Force Base, TX.	Lt. Col. Hamad, Saudi Arabian liaison officer at the Defense Language Institute, English Language Center, Lackland Air Force Base, TX.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Gen. Merrill A. McPeak, Chief of Staff, U.S. Air Force.	18K Gold Bracelet. Recd: Oct. 15, 1991. Est. Value: \$425. Being held in the office of the Chief of Staff pending transfer to GSA for disposition. Gen. McPeak does not desire to participate in sale.	Mrs. Anne Stathiás, wife of Gen. Athanassios Stathias, Hellenic Air Force Chief of Staff.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Gen. Merrill A. McPeak, Chief of Staff, U.S. Air Force.	Silver sword, one meter in length. Recd: Oct. 29, 1991. Est. Value: \$275. On official display in the office of the Chief of Staff, Room 4E925, the Pentagon, Washington, DC.	Air Vice Marshall Talik, Commander, Royal Air Force of Oman.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Gen. Merrill A. McPeak, Chief of Staff, U.S. Air Force.	Cedar-lined wooden chest. Recd: Oct. 29, 1991. Est. Value: \$325. On official display at the Air House, the official residence of the Chief of Staff.	Lt. Gen. Dato' Seri/Haji Mohamed Yunus, Chief of Staff, Royal Malaysian Air Force.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Gen. Merrill A. McPeak, Chief of Staff, U.S. Air Force.	"Dosemealti" (Lohousak pattern) Turkish rug. Recd: Nov. 27, 1991. Est. Value: \$350. On official display at the Air House, the official residence of the Chief of Staff.	Gen. Siyami Tastan, Commander, Turkish Air Force.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Gen. Merrill A. McPeak, Chief of Staff, U.S. Air Force.	"World globe" (all Russian language), approx. 4 feet in diameter, 3 feet high (divides in half). Recd: May 7, 1992. Est. Value: \$1,000. Transferred to GSA for consignment to Smithsonian Institution on Dec. 18, 1992.	General and Mrs. Pytor Deynekin, Commander of the Air Force of the Unified Forces of the Commonwealth of Independent States.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dr. Donald B. Rice, Secretary of the Air Force.	8" high white glass vase. Recd: Jan. 20, 1992. Est. Value: \$100. On official display in Room 4E871, Pentagon, Office of the Secretary of the Air Force.	General-Major Kubizniak, Deputy Chief of Staff for Air Force Matters—CSFR.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF THE AIR FORCE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Dr. Donald B. Rice, Secretary of the Air Force.	10" high crystal vase. Recd: Jan. 20, 1992. Est. Value: \$135. On official display in Room 4E871, Pentagon, Office of the Secretary of the Air Force.	General-Major Kubizniak, Deputy chief of Staff for Air Force Matters—CSFR.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dr. Donald B. Rice, Secretary of the Air Force.	11" high vase made of mauve colored glass and metal. Recd: Jan. 25, 1992. Est. Value: \$100. On official display in Room 4E871, Pentagon, Office of the Secretary of the Air Force.	General Puchala, Chief of General Staff, Polish Air Force.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dr. Donald B. Rice, Secretary of the Air Force.	18" long dagger and scabbard. Recd: Jan. 25, 1992. Est. Value: \$135. On official display in Room 4E871, Pentagon, Office of the Secretary of the Air Force.	General Puchala, Chief of General Staff, Polish Air Force.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dr. Donald B. Rice, Secretary of the Air Force.	6" high metal goblet. Recd: Apr. 15, 1992. Est. Value: \$65. On official display in Room 4E871, Pentagon, Office of the Secretary of the Air Force.	Horst Buttner, Mayor of Bitburg, Germany.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dr. Donald B. Rice, Secretary of the Air Force.	Six 7" high mauve colored wine glasses. Recd: Apr. 15, 1992. Est. Value: \$150. On official display in Room 4E871, Pentagon, Office of the Secretary of the Air Force.	Horst Buttner, Mayor of Bitburg, Germany.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Col. Francis X. Taylor, Commander, Air Force Office of Special Investigations District 45, Osan Air Base, Korea.	19-inch Goldstar color television. Recd: Jan. 21, 1991. Est. Value: \$240. On official display within Headquarters AFOSI District 45, Osan Air Base, Korea.	Lieutenant General Cho, Kun Mae, Commander, Air Force Operations Command, Osan Air Base, Korea.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

¹ Presented to General Fogleman in his former position as Commander, 7th Air Force, Osan Air Base, Korea.

AGENCY: DEPARTMENT OF THE ARMY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Maj. Gen. H.E. Burch, Cdr, Combined Support Command, APO New York 09325.	Handmade Kurdish rugs (black/white 4'x5') and dark brown/light brown 4'x5'). Recd: July 19, 1991. Est. Value: \$965. Reported to GSA Dec. 31, 1992. Approved for official use.	Local Turkish officials	Non-acceptance would have caused embarrassment to U.S. Government.
Lt. Gen. R.D. Chelberg, Chief of Staff, U.S. European Command, APO New York 09128.	One (1) snake skin briefcase; one (1) crocodile skin purse; and one (1) crocodile skin briefcase. Recd: Late 1991. Est. Value: \$1,850. Reported to GSA Dec. 31, 1992, pending transfer to GSA.	A Mali African official	Non-acceptance would have caused embarrassment to donor.
Lt. Gen. W.W. Crouch, Chief of Staff, U.S. Forces, Korea, APO San Francisco 96205.	One (1) Yonex Boron 400 golf club. Recd: Aug. 12, 1992. Est. Value: \$400. Reported to GSA Dec. 31, 1992. Approved for official use.	Maj. Gen. I.K. Do, Republic of Korea.	Non-acceptance would have caused embarrassment to donor.
Maj. Gen. T.C. Foley, Cdr, U.S. Army Armor Center and Fort Knox, Fort Knox, KY 40121-5000.	One Longines Flagship stainless steel and goldtone watch. Recd: Feb. 2, 1992. Est. Value: \$595. Reported to GSA December 31, 1992, pending transfer to GSA.	Maj. Gen. Mit 'Eb Bin Abullah Bin Abul Aziz, Deputy Chief of Military Organization for the Saudi Arabian National Guard.	Non-acceptance would have caused embarrassment to donor.

AGENCY: DEPARTMENT OF THE ARMY—Continued
Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Gen. J.W. Foss, Cdr, U.S. Army Training and Doctrine Command, Fort Monroe, VA 23651	One AK-47 Soviet Assault Rifle (demilitarized). Recd: May 15, 1991. Est. Value: \$500. Reported to GSA December 31, 1992. Approved for official use.	Staff of the German Infantry School, Federal Republic of Germany.	Non-acceptance would have caused embarrassment to donor.
Lt. Gen. H.D. Graves, Superintendent, U.S. Military Academy, West Point, NY 10996.	One (1) set of six silver dessert spoons and a vase. Recd: Sept. 24, 1991. Est. Value: \$250. Reported to GSA Dec. 31, 1992. Approved for official use.	President Roh Tae Woo and his wife, Republic of Korea.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Maj. Gen. R.E. Haddock, Cdr, U.S. Army Security Assistance Command, 5001 Eisenhower Avenue, Alexandria, VA 22333.	One (1) silver plated tea and incense set. Recd: June 23, 1992. Est. Value: \$250. Reported to GSA Dec. 31, 1992, pending transfer to GSA.	Colonel Ahmad Abdul Karim Bu-Alai, Assistant Chief of Staff for Logistics and Supply, Bahrain Defense Force.	Non-acceptance would have caused embarrassment to U.S. Government.
General G.A. Joulwan, Commander-in-Chief, U.S. Southern Command, APO Miami 34003.	One (1) .45 caliber Thompson sub-machine gun. Recd: Mar. 1992. Est. Value: \$3,000. Reported to GSA Dec. 31, 1992. Approved for official use.	Brig. Gen. Alberto Maffey, Cdr, Argentina's Military Institute.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
General G.A. Joulwan, Commander-in-Chief, U.S. Southern Command, APO Miami 43003.	One (1) AK-47 Soviet assault rifle. Recd: Aug. 1992. Est. Value: \$500. Reported to GSA Dec. 31, 1992.	General Garcia, Guatemala's Minister of Defense.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
Colonel P.J. Kern, Cdr, 2d Brigade, 24th Infantry Division, Fort Stewart, GA 31314.	One oriental rug. Recd: Mar. 16, 1991. Est. Value: \$1,200. Reported to GSA Dec. 31, 1992. Approved for official use.	Mayor Emir Strafi, Al Uyainah, Saudi Arabia.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
Colonel G.F. King, Cdr, U.S. Army Support Cmd, Fort Shafter, HI 96858.	One (1) multicolored lithograph entitled "One World." Recd: Sept. 28, 1991. Est. Value: \$210. Reported to GSA Dec. 31, 1992. Approved for official use.	President Roh Tae Woo, Republic of Korea.	Non-acceptance would have caused embarrassment to donor.
Lt. Gen. G.E. Luck, Cdr, XVIII Airborne Corps, Fort Bragg, NC 28307.	One (1) Browning high power automatic pistol (9 mm). Recd: July 17, 1990. Est. Value: \$460. Reported to GSA Dec. 31, 1992. Approved for official use.	Lt. Gen. Anton Slimak, Chief of Staff, Czechoslovakian Army.	Non-acceptance would have caused embarrassment to donor.
Lt. Gen. G.E. Luck, Cdr, XVIII Airborne Corps, Fort Bragg, NC 28307	One (1) French FA-MAS assault rifle (5.56 mm). Recd: Late March 1991. Est. Value: \$1,200. Reported to GSA Dec. 31, 1992. Approved for official use.	Maj. Gen. Janvier, Cdr of the French 6th Light Armor Corps.	Non-acceptance would have caused embarrassment to donor.
General H.N. Schwarzkopf, Commander in Chief, U.S. Central Command, MacDill Air Force Base, FL 33608-7001.	One (1) Rolex watch. Recd: March 15, 1989. Est. Value: \$8,400. Reported to GSA December 31, 1992, pending transfer to GSA.	Amir Bin Isa Al Khalifa, Bahrain ...	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
General H.N. Schwarzkopf, Commander in Chief, U.S. Central Command, MacDill Air Force Base, FL 33608-7001.	One (1) Rado Swiss watch. Recd: Dec. 28, 1989. Est. Value: \$450. Reported to GSA December 31, 1992, pending transfer to GSA.	Prince Abdullah, The Crown Prince, Saudi Arabia.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
General H.N. Schwarzkopf, Commander in Chief, U.S. Central Command, MacDill Air Force Base, FL 33608-7001.	One (1) Concord Swiss watch. Recd: Dec. 31, 1990. Est. Value: \$2,000. Reported to GSA December 31, 1992, pending transfer to GSA.	Crown Prince Abdullah, Saudi Arabia.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
General H.N. Schwarzkopf, Commander in Chief, U.S. Central Command, MacDill Air Force Base, FL 33608-7001.	One (1) gold plated pistol (9 mm). Recd: July 19, 1990. Est. Value: \$500. Reported to GSA December 31, 1992, pending transfer to GSA.	General Abu Shanaf, Chief of Staff, Egyptian Armed Forces.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.

AGENCY: DEPARTMENT OF THE ARMY—Continued
Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
General H.N. Schwarzkopf, Commander in Chief, U.S. Central Command, MacDill Air Force Base, FL 33608-7001.	One (1) gold plated coffee pot, tray, and cups. Recd: June 17, 1990. Est. Value: \$400. Reported to GSA Dec. 31, 1992, pending transfer to GSA.	Othamibn M. Al-Humaid, Assistant Defence Minister.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
General H.N. Schwarzkopf, Commander in Chief, U.S. Central Command, MacDill Air Force Base, FL 33608-7001.	One (1) silver coffee pot, tray, and incense burner. Recd: Sept. 15, 1990. Est. Value: \$400. Reported to GSA Dec. 31, 1992, pending transfer to GSA.	Khalifa Bin Hamad Al-Thani, Air of Qatar.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
General H.N. Schwarzkopf, Commander in Chief, U.S. Central Command, MacDill Air Force Base, FL 33608-7001.	One (1) Omega watch, cufflinks, and ring (gold). Recd: July 22, 1991. Est. Value: \$20,000. Reported to GSA Dec. 31, 1992, pending transfer to GSA.	Amir Jabir Al Sabah, Kuwait	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
General H.N. Schwarzkopf, Commander in Chief, U.S. Central Command, MacDill Air Force Base, FL 33608-7001.	One (1) Rolex watch. Recd: Sept. 22, 1990. Est. Value: \$2,200. Reported to GSA Dec. 31, 1992, pending transfer to GSA.	Prince Mohammed Bin Fahd Al Saud, Eastern Prince Governor, Saudi Arabia.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
General H.N. Schwarzkopf, Commander in Chief, U.S. Central Command, MacDill Air Force Base, FL 33608-7001.	One (1) shotgun. Recd: Dec. 8, 1990. Est. Value: \$300. Reported to GSA Dec. 31, 1992, pending transfer to GSA.	General Abu Traleb, Deputy Prime Minister and Minister of Defense.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
Lt. Col. D.W. Smith, HHC, 7th MEDCOM, Unit 29218 Box 37, APO New York 09102.	One (1) Omega watch. Recd: July 13, 1992. Est. Value: \$750. Reported to GSA Dec. 31, 1992. Approved for official use.	Director General of the Saudi Medical Services Department.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
Mr. Michael P.W. Stone, Secretary of the Army.	One (1) 22-24K gold cuff links and key chain. Recd: Oct. 29, 1991. Est. Value: \$750. Retained for official use; pending transfer to GSA.	General Tantawi, Minister of Defense, Egypt.	Non-acceptance would have caused embarrassment to the donor and Egyptian Government.
Mr. Michael P.W. Stone, Secretary of the Army.	One (1) magnum pistol (357 mm). Recd: Mar. 26, 1992. Est. Value: \$680. Pending transfer to GSA.	Dr. Kommissar, Military Industries, LTD, Israel.	Non-acceptance would have caused embarrassment to donor and the Israeli Government.
Mr. Michael P.W. Stone, Secretary of the Army.	One (1) Baccarat crystal clock. Recd: Mar. 1992. Est. Value: \$450. Returned to donor.	Euro-Copter France, France	Non-acceptance would have caused embarrassment to donor and the French Government.
Maj. Gen. P.J. Vanderploog, Director of Logistics and Security Assistance, U.S. Central Command, MacDill Air Force Base, FL 33608-7001.	One (1) Rolex watch. Recd: Oct. 1, 1991. Est. Value: \$2,970. Reported to GSA Dec. 31, 1992, pending transfer to GSA.	Sheikh Isa Bin Salmon Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to the donor.
Mr. T.M. Williamson, Chief Counsel, U.S. Army Program Manager, Saudi Arabian National Guard Modernization Unit 61304, APO Armed Forces Atlantic 09803-1304.	One (1) Chopard women's silver or white gold wristwatch. Recd: Aug. 15, 1991. Est. Value: \$500. Reported to GSA Dec. 31, 1992, pending transfer to GSA.	Sheikh Abdul Aziz bin Abdul Mohsin Al Tuwaijiri, Assistant Deputy Commander, Saudi Arabian National Guard.	Non-acceptance would have caused embarrassment to the donor

AGENCY: CENTRAL INTELLIGENCE AGENCY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identify if foreign donor and government	Circumstances justifying acceptance
Robert M. Gates, Director, Central Intelligence.	Israeli repousse sterling plaque, View of an Old City, by I. Yeheskel. Mounted on a marble plinth with presentation to Mr. Robert M. Gates. H: 5; L: 12 inches. Recd: Feb. 6, 1992. Est. value: \$250. To be retained for official display.	5 USC 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Robert M. Gates, Director, Central Intelligence.	Israeli terra cotta head of Astorte. With card dating 1800 B.C. In a plexiglass dust proof case. H: of bust: approximately 2 in. Recd: Feb. 6, 1992. Est. value: \$300. To be retained for official display.	5 USC 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Robert M. Gates, Director, Central Intelligence.	Egyptian repousse silver jewel box. Rectangular with bombe body and hinged lid repoussed with trellising vines and leaves and raised on four openwork feet. The interior with blue velvet lining. L: 9 in. Recd: Feb. 5, 1992. Est. value: \$400. To be retained for official display.	5 USC 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Robert M. Gates, Director, Central Intelligence.	Egyptian cast silver three-light low candelabra. Each cast with a leafage supporting double scroll handles with watch fob candle sockets. H: 7 1/4 inches; Wt: approximately 22 oz. Recd: Apr. 13, 1992. Est. value: \$250. To be retained for official display.	5 USC 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Robert M. Gates, Director, Central Intelligence.	Swiss gentleman's oyster perpetual date wristwatch. Maker, Rolex. With stainless steel case and band. Recd: June 19, 1992. Est. value: \$250. To be retained for official display.	5 USC 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Admiral W.O. Studeman, USN, Deputy Director, Central Intelligence.	Pair 9 carat yellow gold mounted and gold one Krugerrand coin cuff links. Recd: May 14, 1992. Est. value: \$350. To be retained for official display.	5 USC 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency employee	Swiss gentleman's wristwatch. Maker Omega. With black leather strap. Case Number 51339819. Recd: Apr. 30, 1992. Est. value: \$250. To be retained for official display.	5 USC 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency employee	Tunisian Fabriz design rug. 7x4.9. With a central shaped medallion enclosing a star, lattice and guard border with rose ground and trellising vine palmette guard border, on light blue ground. Recd: Apr. 24, 1992. Est. value: \$300. To be retained for official display.	5 USC 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued
Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency employee	Goun silk rug. 3.10x2.6. Ivory ground with trellising vine and palmette fields centering a star medallion on red ground, with complementary spandrels, palmette trellising vine guard border on navy blue ground. Recd: May 1, 1992. Est. value: \$400. To be retained for official display.	5 USC 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency employee	Taipei three-piece coin commemorative set. Consisting of one silver coin and two gold coins. Weight of silver: 1 oz. Total weight of gold coins: 1½ oz. Recd: Dec. 17, 1991. Est. value: \$300. To be retained for official display.	5 USC 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency employee	Taipei three-piece coin commemorative set. Consisting of one silver coin and two gold coins. Weight of silver 1 oz. Total weight of gold coins: 1½ oz. Recd: Dec. 17, 1992. Est. value: \$300. To be retained for official display.	5 USC 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency employee	24 karat textured yellow gold miniature figure of a turtle. Wt: 18.25 grams; 11.74 dwt. Recd: July 15, 1992. Est. value: \$250. To be retained for official display.	5 USC 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: COMMODITY FUTURES TRADING COMMISSION
Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identify of foreign donor and government	Circumstances justifying acceptance
Andrea M. Corcoran, director, Division of Trading & Markets.	Meals and lodging. May 21-23, 1992. Approximately \$800.	Department of Trade and Industry, United Kingdom.	Attendance at International Securities Regulators Meeting.
Dennis A. Klejna, director, Division of Enforcement.	Meals and lodging. May 21-23, 1992. Approximately \$800.	Department of Trade and Industry, United Kingdom.	Attendance at International Securities Regulators Meeting.
Daniel F. Waters, assistant director, Division of Enforcement.	Meals and lodging. May 21-23, 1992. Approximately \$800.	Department of Trade and Industry, United Kingdom.	Attendance at International Securities Regulators Meeting.

AGENCY: DEPARTMENT OF DEFENSE
Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Craig Alderman, Jr., Deputy Under Secretary (Security Policy).	Brass navigational instrument, in wooden box with brass corners and a plate engraved: "Astrolabio Nautico sec. XVII". Recd: June 26, 1992. Est. Value: \$250. Approved for official display.	Colonel Luis Carreiro, deCamara, National Security Authority, Ministry of National Defense, Portugal.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Lt. Gen. Teddy G. Allen, USA, Director, Defense Security Assistance Agency.	Large chess set with a mother-of-pearl inlaid board, with carved bone chess pieces, in red velour case. Recd: October 28, 1992. Est. Value: \$300. Reported to GSA January 26, 1993; pending transfer to GSA.	LTG Salah Halaby, Chief of Staff, Egyptian Armed Forces.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Lt. Gen. Teddy G. Allen, USA, Director, Defense Security Assistance Agency, and Mrs. Allen.	Jade golf putter, in blue box; and silver and gold pin with five (5) coral stones, in small red velour case. Recd: December 3, 1992. Est. Value: \$625. Reported to GSA January 26, 1993; pending transfer to GSA.	Gen. and Mrs. Liu Ho-Chien, Chief of the General Staff, Ministry of National Defense, Republic of China, and Mrs. Liu Ho-Chien.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Donald J. Atwood, Deputy Secretary of Defense.	1929 Service Revolver, in black case with presentation plaque inside. Recd: March 30, 1992. Est. Value: \$350. Reported to GSA June 25, 1992; transferred to Smithsonian Institution October 14, 1992.	Toni J. Wicki, Armament Chief of Defense Technology and Procurement Agency, Switzerland.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense.	Dagger with bone and brass handle with brass sheath, in display box; silver-plated plaque; round wooden table with mother-of-pearl design, approx. 19" diameter; and Pakistani rug, beige, burgundy, gray and black, approx. 6'x4'. Recd: January 7, 1992. Est. Value: \$1,880. Approved for official display.	General Asif Nawaz Janjua, Chief of the Army Staff, Pakistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense.	Porcelain figurine of lion holding blue and white shield, approx. 6" tall, in box. Recd: January 10, 1992. Est. Value: \$275. Approved for official display; holding in vault.	Theodor Waigel, Head of Christian Socialist Union, Germany.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense.	Sword with black and brass handle and tassel, with leather and brass sheath, in cloth cover. Recd: February 4, 1992. Est. Value: \$250. Reported to GSA August 11, 1992; pending transfer to GSA.	Pierre Joxe, Minister of Defense, France.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense.	Large wooden etching, hand-carved, local street scene, approx. 3'x2'. Recd: February 17, 1992. Est. Value: \$225. Reported to GSA February 1, 1993; pending transfer to GSA.	Brig. Gen. Luis Mendoza Garcia, Minister of Defense, Guatemala.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense, and Mrs. Cheney.	Sword with gold-tone and black handle, with gold strap trimmed in green and red (handle has small St. Stephen emblem on it); and pottery wall plate (blue, white, gold with brown letters). Recd: March 17, 1992. Est. Value: \$300. Reported to GSA February 1, 1993; pending transfer to GSA.	Lajos Fur, Minister of Defense, Hungary, and Mrs. Fur.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. Lynne V. Cheney, wife of the Secretary of Defense.	Ladies' gold, lizard-shaped pin, with boulder opal on back. Recd: May 1, 1992. Est. Value: \$400. Reported to GSA June 29, 1992; pending transfer to GSA.	Sydney, Australia	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued
Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Dick Cheney, Secretary of Defense.	Fishing reel, 24 carat gold-plated, Ambassadeur 5000 CDL, Abu Garcia; and a blue/yellow patch for "International Ambassadeur Club abu". Recd: May 29, 1992. Est. Value: \$500. Reported to GSA June 30, 1992; pending transfer to GSA.	Abu Garcia, Sweden	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense, and Mrs. Cheney.	Stockholm doll, blonde hair, blue eyes, yellow print dress, and a straw bonnet, with glass/wooden display case. Doll is approx. 19" tall. Brass clock, set in large piece of black oak, 17" long. Recd: May 30, 1992. Est. Value: \$360. Reported to GSA August 3, 1992; pending transfer to GSA.	Anders Bjorck, Minister of Defense, Sweden.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. Lynne V. Cheney, wife of the Secretary of Defense.	Orrefors crystal bowl (Urbino), approx. 6 1/4" diameter, 3 1/8" tall. Recd: June 1, 1992. Est. Value: \$315. Reported to GSA August 11, 1992; pending transfer to GSA.	Manager, Orrefors, Stockholm, Sweden.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense, and Mrs. Cheney.	Stainless steel sword with black and gold-tone handle, with general officer epaulets, belt and two straps, in black velour case; wooden plaque, with burgundy velvet in the center with Turkish seal, approx. 9"x6", in red velour case; and oval wall mirror, silver with repousse design, approx. 15" wide, in purple velour case. Recd: June 15, 1992. Est. Value: \$810. Reported to GSA July 30, 1992; pending transfer to GSA.	Newzat Ayaz, Minister of National Defence, Turkey, and Mrs. Ayaz.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense.	Binoculars by Zeiss, made in West Germany, in leather carrying case. Recd: July 2, 1992. Est. Value: \$1,455. Reported to GSA July 23, 1992; transferred to Smithsonian Institution December 3, 1992.	Volker Ruehe, Minister of Defense, Germany.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense, and Mrs. Cheney.	Cloisonne vase with wooden stand, gold, blue, green and red, approx. 12" tall; and limited edition gold-plated statue of "The Stately Horse". Recd: September 9, 1992. Est. Value: \$315. Approved for official display.	Yeo Ning Hong, Minister of Defense, Singapore.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. Lynne V. Cheney, wife of the Secretary of Defense.	Crystal wine decanter, Carina by Orrefors. Recd: September 22, 1992. Est. Value: \$430. Pending transfer to GSA.	Anders Bjorck, Minister of Defense, Sweden.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense, and Mrs. Cheney.	Large 10-panel Oriental screen, with paintings of "Ten Symbols of Longevity," approx. 66" tall; and cloisonne dish with cover, painted with flowers and butterflies, gold-toned. Recd: October 6, 1992. Est. Value: \$315. Reported to GSA January 27, 1993; pending transfer to GSA.	Choi Sae Chang, Minister of National Defense, Republic of Korea, and Mrs. Choi Sae Chang.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Dick Cheney, Secretary of Defense.	Stainless steel sword with bone handle and sheath, in burgundy case. Recd: October 10, 1992. Est. Value: \$350. Reported to GSA January 19, 1993; pending transfer to GSA.	Minister of Defense, Russia	Non-acceptance would have caused embarrassment to donor & U.S. Government
Dick Cheney, Secretary of Defense, and Mrs. Cheney.	Tony Hsieh golf putter, labeled "Jewelry Golf," with jade putter on golf club, in brown case; and 16" strand of knotted pearls, labeled "South Ocean, Mother of Pearl," in red case. Recd: December 3, 1992. Est. Value: \$760. Reported to GSA January 19, 1993; pending transfer to GSA.	Liu Ho-Chien, Chief of General Staff, Ministry of Defense, Republic of China, and Mrs. Liu Ho-Chien.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Dick Cheney, Secretary of Defense.	Brass navigational instrument, in wooden box with brass corners, and a plate engraved: "Astrolabio Nautico sec. XVII," in box approx. 10 1/2" x 8 1/4". Recd: October 8, 1991. Est. Value: \$250. Reported to GSA August 12, 1992; pending transfer to GSA.	Dr. Joaquin Fernando Nogueira, Minister of National Defense, Portugal.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Dick Cheney, Secretary of Defense.	Traditional Korean bow and arrow set, approx. 4' x 2 1/2', in a wooden/glass display case, containing one bow, seven arrows and one quiver. Recd: November 21, 1991. Est. Value: \$2,500. Reported to GSA July 1, 1992; pending transfer to GSA.	Lee Jong, Koo, Minister of Defense, Republic of Korea.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Capt. Charles J. Dale, USN, Country Director, Office of the Assistant Secretary (International Security Affairs).	Pakistani rug, approx. 5' x 3'. Recd: February 18, 1992. Est. Value: \$950. Approved for official display.	General Asif Nawaz, Chief of the Army Staff, Pakistan Army.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Stephen M. Duncan, Assistant Secretary of Defense (Reserve Affairs).	Three (3) gold-plated daggers in sheaths, with mother-of-pearl handles, in a blue presentation case, lined with red velvet. Recd: September 30, 1991. Est. Value: \$350. Reported to GSA January 22, 1993; has requested to buy the gift.	Chief of Defense General Staff, Rome, Italy.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Stephen M. Duncan, Assistant Secretary of Defense (Reserve Affairs).	Watercolor painting (abstract) of lady's face, in wooden frame, approx. 22" x 30". Recd: January 1992. Est. Value: \$280. Reported to GSA September 25, 1992; pending transfer to GSA.	Ignacio Morales Lechuga, Attorney General of Mexico.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Louis H. Dupart, Deputy Assistant Secretary (Inter-American Affairs).	Black Mexican statue, obsidian glass, with four (4) malachite stones and five (5) soldalite stones, accented with sterling silver, with fancy headdress, approx. 15" tall. Recd: September 11, 1992. Est. Value: \$350. Reported to GSA January 14, 1993; has requested to buy it.	General Antonio Riviello Bazan, Secretary of National Defense, Mexico.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Louis H. Dupart, Deputy Assistant Secretary (Inter-American Affairs).	Sterling silver urn with lid, approx. 7" tall. Recd: December 10, 1992. Est. Value: \$250. Reported to GSA January 29, 1993; pending transfer to GSA.	Mrs. Antonio Riviello Bazan, wife of the Secretary of National Defense, Mexico.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued
Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Carl W. Ford, Principal Deputy Assistant Secretary (International Security Affairs).	Silver dagger in scabbard, in red velvet case. Recd: May 30, 1992. Est. Value: \$250. Reported to GSA October 15, 1992; pending transfer to GSA.	Major General Khalifa Bin Ahmed Al-Khalifa, Minister of Defence and Deputy Commander-in-Chief, State of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Carl W. Ford, Principal Deputy Assistant Secretary (International Security Affairs).	Men's Piaget gold watch, with matching gold cuff links, in red leather case. Recd: November 2, 1992. Est. Value: \$13,500. Reported to GSA December 3, 1992; pending transfer to GSA.	Isa bin Salman Ali, Emir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Carl W. Ford, Principal Deputy Assistant Secretary (International Security Affairs).	Ten (10) piece traditional Bahraini silver-plated coffee service, in red presentation case. Recd: November 3, 1992. Est. Value: \$380. Reported to GSA January 29, 1993; pending transfer to GSA.	Major General Al-Khalifa, Minister of Defense, State of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Stephen J. Hadley, Assistant Secretary (International Security Policy).	Turkish Kilim rug, burgundy, blue, beige and black, approx. 9'7"x14'2". Recd: April 28, 1992. Est. Value: \$500. Approved for official display.	General Fikret Kupeli, Deputy Chief of State, Ministry of Defense, Turkey.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Adm. David E. Jeremiah, USN, Vice Chairman, Joint Chiefs of Staff.	Pakistani rug, beige and brown tones, approx. 6'x4'. Recd: July 23, 1992. Est. Value: \$550. Approved for official display.	Air Chief Marshal Farooq Khan, Chief, Pakistan Air Force.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James R. Lilley, Assistant Secretary (International Security Affairs).	Pakistani rug, beige and gold, approx. 5'x3'6". Recd: January 7, 1992. Est. Value: \$950. Approved for official display.	General Asif Nawaz, Chief of the Army Staff, Pakistan Army.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James R. Lilley, Assistant Secretary (International Security Affairs).	Pakistani rug, beige, green and gray, approx. 6'x4'. Recd: September 23, 1992. Est. Value: \$1,000. Approved for official display.	Ali Ghous Shah, Minister of Defense, Pakistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James R. Lilley, Assistant Secretary (International Security Affairs).	Pakistani rug, multi-colored with red background, approx. 5'x3'. Recd: September 24, 1992. Est. Value: \$250. Approved for official display.	ACM Farooq Khan, Chief of the Pakistani Air Force.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James R. Lilley, Assistant Secretary (International Security Affairs).	Pakistani rug, multi-colored with blue background, approx. 6'1/2'x4'. Recd: September 24, 1992. Est. Value: \$750. Approved for official display.	General Asif Nawaz, Chief of the Army Staff, Pakistan Army.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
H. Diehl McKalip, Director, Security Assistance Operations, Defense Security Assistance Agency.	Men's Baume & Mercier Riviera Watch, gold and stainless steel, in leather case, with matching small leather card case. Recd: November 3, 1992. Est. Value: \$475. Reported to GSA February 3, 1993; pending transfer to GSA.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Col John B. Meagher, USMC, Country Director, Persian Gulf Affairs, International Security Affairs.	Men's Baume & Mercier Riviera Watch, gold and stainless steel. Recd: November 3, 1992. Est. Value: \$450. Reported to GSA November 19, 1992; pending transfer to GSA.	Sheik Isa bin Sulman al-Khalifa, Emir of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Gen Colin L. Powell, USA, Chairman, Joint Chiefs of Staff.	Pakistani rug, approx. 6'x4'; dagger in brass sheath; and plaque with Pakistani emblem. Recd: January 6, 1992. Est. Value: \$1,675. Rug was approved for official display; dagger and plaque were reported to GSA June 9, 1992, pending transfer to GSA.	General Asif Nawaz Janjua, Chief of the Army Staff, Pakistan Army.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Gen Colin L. Powell, USA, Chairman, Joint Chiefs of Staff, and Mrs. Powell.	Single strand of pearls with silver clasp; and small Oriental vase with top and stand. Recd: April 23, 1992. Est. Value: \$450. Reported to GSA May 20, 1992; pending transfer to GSA.	Admiral Makoto Sakuma, Chairman, Joint Staff Council, Japan Self Defense Force.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Gen Colin L. Powell, USA, Chairman, Joint Chiefs of Staff, and Mrs. Powell.	Dagger with silver and bone handle and silver scabbard; and silver incense container. Recd: October 14, 1992. Est. Value: \$575. Reported to GSA January 29, 1993; pending transfer to GSA.	LTG and Mrs. Khamis bin Humaid Salim Al Kibani, Chief of Staff, Sultan's Armed Forces, Sultanate of Oman.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Ltc Victor Raphael, Military Assistant to the Principal Deputy Assistant Secretary (International Security Affairs).	Men's Baume & Mercier Riviera Watch, gold and stainless steel. Recd: November 2, 1992. Est. Value: \$450. Reported to GSA February 3, 1993; pending transfer to GSA.	Isa bin Salman Ali, Emir of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Frederick C. Smith, Acting Deputy Assistant Secretary (Near Eastern and South Asian Affairs), and Mrs. Smith.	Men's Baume & Mercier watch, gold and stainless steel; and single strand pearl necklace with graduated pearls and sterling silver clasp. Recd: October 11, 1991. Est. Value: \$1000. Reported to GSA September 30, 1992; pending transfer to GSA.	Shaikh Khalifa bin Ahmad al-Khalifa, Minister of Defense, State of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Frederick C. Smith, Acting Deputy Assistant Secretary (Near Eastern and South Asian Affairs).	Men's Baume & Mercier watch, gold and stainless steel. Recd: October 18, 1991. Est. Value: \$500. Reported to GSA September 30, 1992; pending transfer to GSA.	Isa bin Salman al-Khalifa, Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Paul Wolfowitz, Under Secretary for Policy.	Decorative bowl by Kutani, gold-tone with floral design, approx. 12 1/4" diameter, with stand, in wooden box. Recd: June 15, 1992. Est. Value: \$250. Reported to GSA August 3, 1992; pending transfer to GSA.	Gen. Tetsuya Nishimoto, Chief of Staff, JGSDF, Japan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Paul Wolfowitz, Under Secretary for Policy.	Silver box with repousse design, approx. 7 1/2" x 4 1/4", in printed cloth-covered box. Recd: June 21, 1992. Est. Value: \$275. Reported to GSA August 10, 1992; pending transfer to GSA.	B.J. Habibie, Minister of State for Research and Technology, Republic of Indonesia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Paul Wolfowitz, Under Secretary for Policy.	Silver box with repousse design, approx. 7¼"x4¼", in printed cloth-covered box. Recd: October 27, 1992. Reported to GSA February 3, 1993; pending transfer to GSA.	B.J. Habibie, Minister of State for Research and Technology, Republic of Indonesia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Paul Wolfowitz, Under Secretary of Defense for Policy, and Mrs. Wolfowitz.	Battery operated ship's clock; and set of four (4) silk pillow covers, with floral designs (hand-painted). Recd: December 3, 1992. Est. Value: \$290. Reported to GSA January 29, 1993; pending transfer to GSA.	Gen. and Mrs. Liu Ho-Chien, Chief of the General Staff, Ministry of National Defense, Republic of China.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF EDUCATION

Report of Travel or Expenses of Travel

Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor or government	Circumstances justifying acceptance
Received—May 1–11, 1992, Estimated Value—\$5,320. Expended for in-country transportation, some hotel, meals and miscellaneous expenses.	Government of Australia	To accompany Secretary of Education on official State Department business trip to Australia. Contact: Ms. JoAnn Di Carlo, Executive Management Staff Director, Office of the Secretary 202–205–3697.

AGENCY: DEPARTMENT OF JUSTICE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Robert S. Mueller, III, Assistant Attorney General, Criminal Division.	14K tie bar and chain w/amethyst. Recd: July 7, 1992. Est. Value: \$295. Delivered to GSA on Sept. 16, 1992.	Mr. Jeong, Prosecutor General of South Korea.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: U.S. GENERAL ACCOUNTING OFFICE

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Harry S. Havens, Assistant Comptroller General.	Rcd: October 3–12, 1992. Est. Value: \$1,615. Expended for hotel, meals, car and driver, and cultural activities.	Russian Federation Supreme Soviet, Russia.	To determine whether or not a continuing cooperative relationship between the U.S. General Accounting Office and organs of the Supreme Soviet of the Russian Federation would be mutually beneficial to both organizations and, if so, what would be the appropriate next steps in developing such a relationship.

AGENCY: U.S. GENERAL ACCOUNTING OFFICE—Continued

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
David G. Mathiasen, Special Assistant to the Assistant Comptroller General.	Rcd: October 3–12, 1992. Est. Value: \$1,615. Expended for hotel, meals, car and driver, and cultural activities.	Russian Federation Supreme Soviet, Russia.	To determine whether or not a continuing cooperative relationship between the U.S. General Accounting Office and organs of the Supreme Soviet of the Russian Federation would be mutually beneficial to both organizations and, if so, what would be the appropriate next steps in developing such a relationship.
Irvin L. White, Member of the National Research Council/National Academy of Sciences, Spouse of Mary R. Hamilton, Director for Quality Management.	Rcd: November 9–17, 1992. Est. Value: \$900. Expended for in-country lodging, meals, and transportation.	Romanian Government, Romania	Served as Chair and member of a delegation for the National Research Council/National Academy of Sciences that participated in a joint workshop with Romanian scientists and energy experts hosted in Romania.

AGENCY: NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Daniel S. Goldin, Administrator, National Aeronautics and Space Administration.	Russian Lacquer Box. Rec: July 16, 1992. Est. value: \$500.	Yuri Koptev, General Director, Russian Space Agency.	Non-Acceptance would have caused embarrassment to donor and U.S. Government.
Mr. Jack Lee, Director, Marshall Space Flight Center.	Original Oil Painting of Spacelab Mission I. Rec: March 25, 1992. Est. value: \$2,000. Approved for Official Use.	H.R.H. Phillipe, Prince of Belgium	Non-Acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: NATIONAL SPACE COUNCIL

REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Steven D. Harrison, Director for Advance Concepts, Science and Technology.	Recd: Aug. 19, 1992. Est. value: \$237. Expended for accommodations.	"Ettore Majorana", International Centre for Scientific Culture, Office of the President, Italy.	To attend international seminar on: "Proliferation of Weapons for Mass Destruction" and "International Cooperation on Defense Systems".

AGENCY: DEPARTMENT OF THE NAVY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Honorable H. Lawrence Garrett III, Secretary of the Navy.	Gold cuff links and gold key ring. Recd: October 29, 1991. Est. Value: \$700. Being held in General Counsel's office pending transfer to GSA for disposition.	General Mohamed Hussein Tantawi, Minister of Defense, Cairo, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE NAVY—Continued
Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
General Joseph P. Hoar, USMC, Commander in Chief, U.S. Central Command.	Pakistani carpet. Recd: April 12, 1992. Est. Value: \$650. Officially accepted by SJA to CMC of the Marine Corps, and retained at U.S. Central Command until SNO changes command, at which time it will be forwarded to GSA.	General Shamin Alam Khan, Chairman of Pakistan JCS Committee.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Joseph P. Hoar, USMC, Commander in Chief, U.S. Central Command.	Tabrizi carpet. Recd: April 14, 1992. Est. Value: \$800. Accepted by SJA to CMC, and retained at USCENCOM.	Lieutenant General Ayaz Ahmad, Commander, 11th Corps, Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Joseph P. Hoar, USMC, Commander in Chief, U.S. Central Command.	Ceremonial sword & scabbard. Recd: June 3, 1992. Est. Value: \$600. Accepted by SJA to CMC, and retained at USCENCOM.	Major General Jabir Al-Khalid Al-Sabah, Chief, General Staff, Kuwait.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Joseph P. Hoar, USMC, Commander in Chief, U.S. Central Command.	Pakistani carpet. Recd: July 24, 1992. Est. Value: \$650. Accepted by SJA to CMC, and retained at USCENCOM.	Farooq Feroze Khan, Chief of Air Force Staff, Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Admiral Frank B. Kelso II, USN, Chief of Naval Operations.	Wool rug (6 x 4 feet) Recd: January 21, 1992. Est. Value: \$700. Being retained in CNO Quarters, Tingey House, Washington Navy Yard.	Admiral Saeed Mohammad Khan, Chief of Naval Staff, Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Admiral Frank B. Kelso, II, USN, Chief of Naval Operations.	Wool rug (6 x 4 feet. Recd: December 8, 1992. Est. Value: \$700. Being retained in CNO Quarters, Tingey House, Washington Navy Yard.	Admiral Saeed Mohammad Khan, Chief of Naval Staff, Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General General Carl E. Mundy, Jr., USMC, Commandant of the Marine Corps.	Ceremonial Sword Recd: October 19, 1992. Est. Value: \$400. Being retained in the house of the Commandant.	General Marie Voynot, Government of France.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: PEACE CORPS
Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition of location	Identity of foreign donor and government	Circumstances justifying acceptance
Barbara Zartman, Acting Director	(1) Sterling Silver Dove. Nov. 23, 1992. Est. Value: over \$200. Currently on Display at Peach Corps Office of Washington, DC.	Government of Tunisia	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: SECURITIES AND EXCHANGE COMMISSION
Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Frank Kelly, Deputy Director, Office of Public Affairs, Policy Evaluation, & Research.	Recd: Apr. 1992. Est. Value: \$2,500. Extended for airfare, hotel & meals.	Hanns Seidel Foundation, Munich, Germany.	Cultural and educational program of Germany and Czechoslovakia.

AGENCY: U.S. DEPARTMENT OF TREASURY
Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Nicholas F. Brady, Secretary	July 6, 1992. Est. Value: \$200 Procelain Lion.	Theo Weigel, German Finance Minister.	Non-acceptance would have caused embarrassment to the donor and the U.S. Govt.

AGENCY: U.S. DEPARTMENT OF TREASURY
Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Nicholas F. Brady, Secretary	July 5-8, 1992. Est. Value: \$2,800. Expenses for hotel accommodations.	German Government	Lodging Expenses at Ec. Summit.
David Mulford, Under Secretary ...	July 5-8, 1992. Est. Value: \$1,133.30. Expended for Hotel Accommodations.	German Government	Lodging Expenses at Ec. Summit.
Olin Wethington, Assistant Secretary.	July 5-8, 1992. Est. Value: \$1,133.30. Expended for Hotel Accommodations.	German Government	Lodging Expenses at Ec. Summit.

AGENCY: BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Stephen E. Higgins, Director, Alcohol, Tobacco and Firearms.	Payment for all lodging expenses by the Italian American Trade Ministry. Recd-November 14, 1992 Est Cost—\$520.00 for four nights of lodging, November 11-14, 1992. Reported to Main Treasury.	Siena, Italy, The American Wine Committee of the Italian Trade Commission.	Attempted payment for lodging was unsuccessful; further effort would have caused embarrassment to donor.

AGENCY: U.S. CUSTOMS SERVICE
Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Jack J. Harriman, Inspector	Korean Celadon Vase. Recd: November 12, 1992. Est. Value: \$410. Reported to GSA December 22, 1992; recipient indicates interest in purchasing.	Kwang-su Park, Director General, Korean Customs Administration.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE
Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James A. Baker III, Secretary of State.	Framed oil painting of a tropical landscape, 2224 inches. Recd: January 17, 1992. Est. Value: \$225. In Office of Protocol pending transfer to GSA.	Violeta B. de Chamorro, President of Nicaragua.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James A. Baker III, Secretary of State.	(1) Ceremonial Dagger. Est. Value: \$65. Retained by recipient. (2) Large rug, rust and copper in color, 68 feet. Est. Value: \$900. In Office of Protocol pending transfer to GSA. Recd: February 12, 1992.	Ayaz Mutalibov, President of Azerbaijan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James A. Baker III, Secretary of State.	Large rug, patterned in red, 810 feet. Recd: February 13, 1992. Est. Value: \$1,800. In Office of Protocol pending transfer to GSA.	Saparmurad Niyazov, President of Turkmenistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James A. Baker III, Secretary of State.	(1) Large tole tray with black and floral design. Est. Value: \$250. (2) Marble picture of a winter scene. Est. Value: \$100. (3) Small painting of two trees on a cliff, 4.512 inches. Est. Value: \$10. Recd: February 14, 1992. In Office of Protocol pending transfer to GSA.	Evgeny Avronin, Director, Institute of Technology, Russia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James A. Baker III, Secretary of State.	(1) Green marble and purple quartz desk set. Est. Value: \$200. In Office of Protocol pending transfer to GSA. (2) Small black lacquer box. Est. Value: \$150. Retained by recipient. (3) Painting on marble of a church scene. Est. Value: \$15. In Office of Protocol pending transfer to GSA. Recd: February 15, 1992.	Eduard Rossel, Governor of Yekaterinburg, and Mrs. Rossel, Russia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James A. Baker III, Secretary of State.	(1) Purple robe with gold border. Est. Value: \$150. In Office of Protocol pending transfer to GSA. (2) Black felt hat. Est. Value: \$5. Retained by recipient. (3) Large porcelain vase with orange floral design, with a photograph of recipient on front. Est. Value: \$175. Retained by recipient. Recd: February 16, 1992.	Abduganiyevich Karmov Islam, President of Uzbekistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James A. Baker III, Secretary of State.	(1) Hunter's powder flask, carved on front with an animal scene. Est. Value: \$175. Retained by recipient. (2) Leather picture frame, 810 inches. Est. Value: \$90. In Office of Protocol pending transfer to GSA. Recd: April 29, 1992.	Richard Von Weizsaecker, President of Germany.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James A. Baker III, Secretary of State.	Traditional sterling silver herbal tea cup. Recd: May 12, 1992. Est. Value: \$250. In Office of Protocol pending transfer to GSA.	Patricio Aylwin, President of Chile	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued
Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James A. Baker III, Secretary of State.	(1) Dagger and sheath. Est. Value: \$50. Retained by recipient. (2) White cape. Est. Value: \$150. Retained by recipient. (3) Large abstract painting. Est. Value: \$150. In Office of Protocol pending transfer to GSA. (4) Metal statue of Christopher Columbus and a ship with flags flying. Est. Value: \$50. In Office of Protocol pending transfer to GSA. Recd: May 26, 1992.	Eduard Shevardnadze, Chairman of State Council, Georgia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James A. Baker III, Secretary of State.	(1) Hand-bound book of 1991 Japanese postage stamps. Est. Value: \$40. (2) Hand-bound book of Mt. Fuji commemorative stamps. Est. Value: \$60 (3) Silk scarf: orange, yellow and blue. Est. Value: \$150. (4) Lacquer ware plate with stand. Est. Value: \$35. Recd: June 4, 1992. In Office of Protocol pending transfer to GSA.	Shin Kanemaru, LDP Vice President, Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James A. Baker III, Secretary of State.	Porcelain statue of lion, with personalized inscription. Recd: July 7, 1992. Est. Value: \$250. In Office of Protocol pending transfer to GSA.	Max Streibl, Minister-President of Bavaria, Germany.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. James A. Baker III, wife of Secretary of State.	Modern stone sculpture on wooden base. Recd: January 17, 1992. Est. Value: \$225. In Office of Protocol pending transfer to GSA.	Pier Pierson, Vice Minister of Culture, Nicaragua.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. James A. Baker III, wife of Secretary of State.	Small Ananov egg locket. Recd: May 1, 1992. Est. Value: \$1,000. In Office of Protocol pending transfer to GSA.	Anatoly Sobchak, Mayor of St. Petersburg, Russia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. James A. Baker III, Secretary of State.	Jewelry set: amber and silver necklace, bracelet and earrings. Recd: June 16, 1992. Est. Value: \$225. In Office of Protocol pending transfer to GSA.	Naina Yeltsin, wife of President of Russia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
William Brown, U.S. Ambassador to Israel and Mrs. Brown.	Limited Edition Lithograph 90/150: "Operation Entebbe". Recd: January 1992. Est. Value: \$250. In Office of Protocol pending transfer to GSA.	Chiam Herzog, President of Israel, and Mrs. Herzog.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Edward P. Djerejian, Assistant Secretary of State, Bureau for Near Eastern and South Asian Affairs.	Gold and stainless steel Eterna watch. Recd: February 17, 1992. Est. Value: \$600. In Office of Protocol pending transfer to GSA.	Shaikh Isa bin Salman Al Khalifa, Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Jennifer Ann Fitzgerald, Deputy Chief of Protocol.	Gold necklace and earrings. Recd: January 10, 1993. Est. Value: \$250. In Office of Protocol pending transfer to GSA.	Jerry John Rawlings, President of Ghana.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Charles W. Hostler, U.S. Ambassador to Bahrain.	One Khanjar (curved Arabic dagger). Recd: February 25, 1992. Est. Value: \$1,000. In Office of Protocol pending transfer to GSA.	Shaikh Isa bin Salman Al Khalifa, Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Joseph Lebaron, wife of Foreign Service Officer, American Embassy Abu Dhabi.	One pair of 18 karat gold earrings. Recd: December 19, 1992. Est. Value: \$272. In Office of Protocol pending transfer to GSA.	Shaikh Isa bin Salman Al Khalifa, Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued
Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
David L. Mack, Deputy Assistant Secretary of State, Bureau for Near Eastern and South Asian Affairs.	Tissot wrist watch. Recd: February 17, 1992. Est. Value: \$250. In Office of Protocol pending transfer to GSA.	Shaikh Isa bin Salman Al Khalifa, Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Nicholas Platt, wife of the U.S. Ambassador to Pakistan.	One pair of gold earrings with blue stone and clear crystalline insert. Recd: October 20, 1992. Est. Value: \$212. In Office of Protocol pending transfer to GSA.	Begum Nawaz Shaheed, wife of the Prime Minister of Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. William Rugh, wife of the U.S. Ambassador to the United Arab Emirates.	One pair of 18 karat gold earrings. Recd: December 19, 1992. Est. Value: \$272. In Office of Protocol pending transfer to GSA.	Sheikha Alahra, wife of the Ruler of Ras Al Khaimah, Shaikh Saqu bin Mohammed al Qasbi, United Arab Emirates.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Paul Taylor, wife of the U.S. Ambassador to the Dominican Republic.	Antique coin pendant. Recd: January 6, 1992. Est. Value: \$240. In Office of Protocol pending transfer to GSA.	Secretary of Commerce and Industry and Mrs. Bello Andino, Dominican Republic.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Michael Ussery, U.S. Ambassador to Morocco.	One silver belt. Recd: January 13, 1992. Est. Value: \$300. In Office of Protocol pending transfer to GSA.	Abdelrahmane Bouffas, Minister of Housing of Morocco.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Edward Walker, wife of the U.S. Ambassador to the United Arab Emirates.	One 21 karat gold necklace. Est. Value: \$800. One 21 karat gold bracelet. Est. Value: \$314. One 21 karat gold bracelet. Est. Value: \$595. Recd: June 25, 1992. In Office of Protocol pending transfer to GSA.	Government of the United Arab Emirates.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
John Giffen Weinmann, Chief of Protocol.	Silver plated, wood-lined box. Recd: May 13, 1993. Est. Value: \$300. In Office of Protocol pending transfer to GSA.	Carlos Klammer, Chief of Protocol of Chile.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
John Giffen Weinmann, Chief of Protocol.	Crystal handled desk set, with 24 karat gold plating. Recd: April 2, 1992. Est. Value: \$450. In Office of Protocol pending transfer to GSA.	Felipe Gonzalez, Prime Minister of Spain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Frank G. Wisner, U.S. Ambassador to the Philippines.	Commemorative gold coin. Recd: May 6, 1992. Est. Value: \$355. In Office of Protocol pending transfer to GSA.	Corazon C. Aquino, President of the Philippines.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

[FR Doc. 93-31424 Filed 12-29-93; 8:45 am]

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Federal Register

Wednesday
December 29, 1993

Part IV

Department of Labor

Employment and Training Administration

20 CFR Parts 626 and 638

Job Training Partnership Act: Job Corps
Program Under Title IV-B; Rule

DEPARTMENT OF LABOR**Employment and Training Administration****20 CFR Parts 626 and 638**

RIN 1205-AA

Job Training Partnership Act: Job Corps Program Under Title IV-B

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Office of Job Corps of the Employment and Training Administration of the Department of Labor is amending its regulations for operation of the Job Corps program under title IV-B of the Job Training Partnership Act (JTPA). These amendments are required so that the regulations will conform to the Job Training Reform Amendments of 1992 (1992 Amendments). With the amended regulations, Job Corps can implement related portions of the 1992 Amendments.

EFFECTIVE DATE: This final rule is effective on January 28, 1994. Any requirement mandated by the Job Training Reform Amendments of 1992 was implemented by the Department of Labor on July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy F. Sullivan, Chief, Division of Program Planning and Development, Office of Job Corps, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., room N4510, Washington, DC 20210. Telephone: (202) 219-5556 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:**A. Introduction**

The Employment and Training Administration (ETA) of the Department of Labor (DOL) is amending its regulations for the operation of Job Corps. On June 14, 1993, DOL published in the *Federal Register* at 58 FR 33000 a proposed rule to amend the Job Corps regulations, inviting comments from interested persons through July 14, 1993. The final rule set forth below is being promulgated after full consideration of the comments received in response to that notice of proposed rulemaking. Its purpose is to implement amendments to the Job Training Partnership Act (JTPA or Act) applicable to Job Corps and contained in the Job Training Reform Amendments of 1992 (1992 Amendments), which became effective July 1, 1993. The

amendments in this final rule involve: (1) A change in the language related to income eligibility, (2) changes in the definitions of "family" and "family of one," (3) a change in the language defining eligibility for Job Corps through receipt of food stamps, (4) provision for a portion of the total Job Corps enrollment to come from persons who are ages 22 through 24, (5) a change requiring the national performance measurement system to include the establishment of annual performance standards for centers and other program components, (6) provision of a management fee for all Job Corps contractors, (7) addition of language giving priority in nonresidential programs to single parents, (8) provision for concurrent or subsequent enrollment of participants in JTPA titles II and IV-B programs, (9) change in the language related to individuals with handicaps, and (10) provision for child care at centers where practicable.

B. Comments on Proposed Rule and DOL's Responses

The proposed rule to amend the Job Corps regulations was published in the *Federal Register* at 58 FR 33000 (June 14, 1993). Written comments from interested persons were invited through July 14, 1993. The comments, summarized by topic, and DOL's response to those comments, are set forth below.

Job Corps received three comments on the proposed rule. Most were directed to the amended definition of family, income eligibility through receipt of food stamps, and transfer of participants between JTPA titles II and IV-B.

The comments are responses are as follows:

1. Section 638.200 Definitions**a. "Economically Disadvantaged"**

Two commentors expressed a concern about the difficulty in determining income eligibility for Job Corps of youth who receive or whose families receive food stamps, or who are eligible for food stamps within the 6-month period before application to Job Corps. The commentors believed that eligibility for food stamps within the 6-month period would be difficult to verify and document. While Job Corps appreciates the difficulty in obtaining such information, the definition is contained in the 1992 Amendments and therefore no revision to this definition is appropriate.

b. "Family"

Two commentors were concerned that the amendment definition of "family"

may affect eligibility for Job Corps under the economically disadvantaged criterion. They recognize it is more narrow than the previous regulatory definition and excludes relatives other than spouse, child, parent or legal guardian, with who a youth might live, such as grandparents, aunts, uncles, siblings or cousins. The definitions of "family" is contained in the 1992 Amendments and therefore no revision to this definition is appropriate. See 29 U.S.C. 1503(34) (1993 supp.).

One commentor believed that the definition implies that foster children are considered family through "decrees of court" and that this would impact how family income is calculated in determining the eligibility of the foster child. Job Corps regulations, however, state that foster children and wards of the court, on behalf of whom State or local government payments are made, are eligible for Job Corps under the economically disadvantaged criterion, so no income calculation is needed. 20 CFR 638.200, definition of "economically disadvantaged", paragraph (4); see also 29 U.S.C. 1503(8)(E) (1993 supp.).

c. "Income"

One commentor questioned how family members are counted and how income is computed for those who live in the household for only a portion of the 6 months prior to application. The regulations state that income of a family member is counted for only that portion of the period when the person is actually a member of the family. No change will be made in the definition.

With respect to the same definition, one commentor expressed confusion in the use of "individual" and "individual with disabilities." While Job Corps will continue to define a youth who falls within one definition of "family" for income purposes as an "individual," the term "person with disabilities" or other similar nomenclature can easily be substituted for "individual with disabilities" when discussing youth in the context of income eligibility for Job Corps.

d. Section 638.541 Job Corps Training Opportunities

Two commentors indicated that the use of the term "transfer" to apply to the amended language which allows for concurrent or subsequent participation in both title II and title IV-B programs, did not describe the relationship accurately. Job Corps agrees and has revised the language of the regulation to describe the relationship.

One commentor recommended that Job Corps link with state Job

Opportunities and Basic Skills (JOBS) programs. See 42 U.S.C. 681 *et seq.*; and 45 CFR part 251. Job Corps regulations already specify development of linkages with "services supporting participants in the Job Opportunities and Basic Skills Training Program [JOBS]." See 20 CFR 638.541 (1993).

One commentor proposed reducing the age of enrollees to 14 for parenting teens. The purpose of Job Corps is to train young adults for placement in jobs. Since the legal age for employment is 16, youth under 16 could not be placed. In addition, Job Corps believes the variation in age and maturity between 14-year-olds and 24-year-olds is too great to mix them in a residential program.

e. Section 638.542 Child Care Services

A comment was received recommending that Job Corps provide day care at all centers. The current policy of Job Corps is to utilize local day care when available. Funding has not been provided for Job Corps to operate day care programs at all centers and the Department has determined that it is not practicable. 29 U.S.C. 1698(e) (1993 supp.). Accordingly, the language contained in the regulation has not been amended.

Regulatory Impact

This final rule applies only to changes in Job Corps regulations required by enactment of the Job Training Reform Amendments of 1992. It does not constitute "a significant regulatory action" within the meaning of Executive Order 12866 of September 30, 1993 (58 FR 51735). For the same reasons, as required by the Regulatory Flexibility Act, the Department of Labor, at the time the proposed rule was published, notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

The final rule contains no new collection of information requirements.

List of Subjects

20 CFR Part 626

Grant programs, Labor, Manpower training programs.

20 CFR Part 638

Contract programs, Labor, Training and employment programs.

Final Rule

Accordingly, 20 CFR chapter V is amended as follows:

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

1. The authority citation to 20 CFR part 626 continues to read:

Authority: 29 U.S.C. 1579(a); section 6305(f), Pub. L. 100-418, 102 Stat. 1107; 29 U.S.C. 1791(e).

§ 626.4 [Amended]

2. The consolidated table of contents in § 626.4 is amended by revising the heading for § 638.302 to read as follows:

§ 626.4 Table of contents for the regulations under the Job Training Partnership Act.

*	*	*	*	*
638.302	Performance	measurement	*	*
*	*	*	*	*

PART 638—JOB CORPS PROGRAM UNDER TITLE IV-B OF THE JOB TRAINING PARTNERSHIP ACT

3. The authority for part 638 continues to read as follows:

Authority 29 U.S.C. 1579(a).

4. Section 638.200 is amended as follows:

a. In the definition of "Economically disadvantaged", the introductory language in paragraph (2) is revised and paragraph (3) is revised;

b. The definition of "Family" is revised;

c. The definition of "Family income" is removed and the definition of "Income" is added;

d. The definition of "Individual with handicaps" is removed and the definition of "Individual with disabilities" is added;

e. The definition of "Family of one" is removed and the definition of "Individual" is added; to read as follows:

§ 638.200 Definitions.

Economically disadvantaged means an individual who:

(2) Has, or is a member of a family which has received a total income for the 6-month (annualized) period prior to application to the program which, in relation to family size or for an individual, was not in excess of the higher of:

(3) Is receiving (or has been determined within the 6-month period prior to the application for the program

involved to be eligible to receive) food stamps pursuant to the Food Stamp Act of 1977, as administered by the U.S. Department of Agriculture;

* * * * *
Family means persons living in a single residence who are related by blood, marriage, or decrees of court and are included in one or more the following categories:

(1) A husband, wife and dependent children,

(2) A parent or guardian and dependent children, and

(3) A husband and wife. A step-child or step-parent is considered to be related by marriage.

* * * * *
Income means all income actually received from all sources by an individual or, in the case of a family, by all members of the family for the 6-month (annualized) period prior to application. Family size is the maximum number of family members during the 6-month period prior to application. When computing family income, income of a spouse and other family members is counted for the portion of the 6-month (annualized) period prior to application that the person was actually a member of the family.

(1) For the purpose of determining an individual's eligibility for participation in the Job Corps program, family income includes:

(i) Gross wages, including wages from community service employment (CSE), work experience, and on-the-job training (OJT) paid from Job Training Partnership Act funds, and salaries (before deductions);

(ii) Net self-employment income (gross receipts minus operating expenses); and

(iii) Other money income received from sources such as interest, net rents, OASI (Old Age and Survivors Insurance) social security benefits, pensions, alimony, and periodic income from insurance policy annuities, and other sources of income.

(2) Family income does not include:

(i) Non-cash income such as food stamps or compensation received in the form of food or housing;

(ii) Imputed value of owner-occupied property, *i.e.*, rental value;

(iii) Public assistance payments;

(iv) Cash payments received pursuant to a State plan approved under title I, IV, X, or XVI of the Social Security Act, or disability insurance payments received under title II of the Social Security Act;

(v) Federal, State, or local unemployment benefits;

(vi) Capital gains and losses;
(vii) One-time unearned income, such as, but not limited to:

(A) Payments received for a limited fixed term under income maintenance programs and supplemental (private) unemployment benefits plans;

(B) One-time or fixed-term scholarship or fellowship grants;

(C) Accident, health, and casualty insurance proceeds;

(D) Disability and death payments including fixed-term (but not lifetime) life insurance annuities and death benefits;

(E) One-time award and gifts;

(F) Inheritance, including fixed-term annuities;

(G) Fixed-term workers compensation awards;

(H) Soil bank payments; and

(I) Agricultural crop stabilization payments;

(viii) Pay or allowance which were previously received by any veteran while serving on active duty in the Armed Forces;

(ix) Educational assistance and compensation payments to veterans and other eligible persons under chapters 11, 13, 31, 34, 35, and 36, of title 38, U.S. Code;

(x) Payments made under the Trade Act of 1974;

(xi) Payments received under the Black Lung Benefits Act (30 U.S.C. 901 et seq.);

(xii) Any income directly or indirectly derived from, or arising out of, any property held by the United States in trust for any Indian tribe, band, or group or any individual; per capita payments; and services, compensation or funds provided by the United States in accordance with, or generated by, the exercise of any right guaranteed or protected by treaty; and any property distributed or income derived therefrom, or any amounts paid to or for the legatees or next of kin of any member, derived from or arising out of the settlement of an Indian claim; and

(xiii) Child support payments.

Individual means a person who lives alone, or who lives with unrelated individuals, or who lives in a single

residence where no family member claims that person as a dependent. An individual with disabilities has an option of applying and being considered as a member of a family or as an individual.

Individual with disabilities means any person within the definition at 29 CFR part 33 or 34 or 41 CFR part 60-741 as applicable. Although the definition employs the plural form "disabilities," and individual with a single impairment is covered within the definition. See §§ 638.539(g) and 638.811(a).

5. In § 638.301, a new paragraph (j) is added to read as follows:

§ 638.301 Funding procedures.

(j) All Job Corps contractors shall be provided with an equitable and negotiated management fee of not less than 1 percent of the contract amount.

6. Section 638.302 is revised to read as follows:

§ 638.302 Performance measurement.

The Job Corps Director shall establish a national performance measurement system for centers and other program components which shall include annual performance standards.

7. In § 638.400, paragraph (a) is revised to read as follows:

§ 638.400 Eligibility for participation.

(a) Is at least 16 and not yet 25 years of age at the time of enrollment, with the following exceptions:

(1) In the case of an otherwise eligible individual with disabilities, there is no upper age limit;

(2) Not more than 20 percent of the individuals enrolled by Job Corps may be ages 22 through 24; and

(3) Youths 14 to 15 years of age may be eligible for enrollment upon a specific determination by the Job Corps Director to enroll them;

8. In § 638.401, a new paragraph (d) is added to read as follows:

§ 638.401 Outreach and screening of participants.

(d) In enrolling individuals who are to be nonresidential participants, priority shall be given to those eligible individuals who are single parents with dependent children.

9. In § 638.539, paragraph (g)(1) is revised to read as follows:

§ 638.539 Complaints and Disputes.

(1) 29 CFR part 34 and subparts B and C and Appendix A of 29 CFR part 32 for programs receiving financial assistance under JTPA.

10. Section 638.541 is amended by adding a sentence at the end to read as follows:

§ 638.541 Job Corps training opportunities.

* * * Nothing in this part shall be construed to prohibit an individual who has been a participant in Job Corps from concurrently or subsequently participating in programs under title II of JTPA, or to prohibit an individual who has been a participant in programs under title II of JTPA from concurrently or subsequently participating in Job Corps.

11. Section 638.542 is amended as follows:

a. The present undesignated paragraph is redesignated as paragraph (b); and

b. A new paragraph (a) is added, to read as follows:

§ 638.542 Child care services.

(a) Job Corps centers shall, where practicable, arrange for the provision of child care for students with dependent children.

Signed at Washington, DC, this 21st day of December 1993.

Doug Ross,

Assistant Secretary of Labor.

[FR Doc. 93-31506 Filed 12-28-93; 8:45 am]

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Federal Register

Wednesday
December 29, 1993

Part V

Department of Commerce

Economic Development Administration

Federal Levee Repair Policy Under
Economic Development Assistance for
Disaster Relief Activities; Notice

DEPARTMENT OF COMMERCE**Economic Development Administration**

[Docket No. 930942-3331]

Federal Levee Repair Policy Under Economic Development Assistance for Disaster Relief Activities

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Economic Development Administration (EDA) is announcing that it will begin receiving requests for assistance through grants to non-Federal facilities for levee repairs in accordance with the Supplementary Notice in 58 FR 54008, October 19, 1993, as part of its economic recovery assistance program for the Midwest Floods of 1993.

In carrying out this program, EDA will collaborate with the U.S. Army Corps of Engineers (Corps) to ensure that the proposed levee repairs will meet all appropriate Corps criteria so that levees repaired under this notice will be eligible in the future for participation in the Corps' program of Emergency Levee Repairs under P.L. 84-99. The final decision as to whether a levee will be repaired with funds available under this Notice shall be solely that of EDA.

DATES: This announcement is effective immediately. Preapplications in accordance with criteria set forth herein for levee repairs which are needed to protect critical public infrastructure will be received until January 28, 1994.

ADDRESSES: To establish merits of project proposals, interested parties should contact the EDA office for the area (see Appendix A) for a preapplication, Form ED-101P (SF-424). Requests for assistance shall be submitted directly to the EDA regional office that serves the area (see Appendix A).

FOR FURTHER INFORMATION CONTACT: See listing in Appendix A.

SUPPLEMENTARY INFORMATION:**Funding Availability**

Funds up to \$18 million are available for this levee repair program. These funds are provided from the \$200 million for emergency expenses which are appropriated under Public Law 103-75. It is anticipated that the funds announced herein for repairing levees may not be sufficient to repair all the levees for which requests are received.

Grant Rates

The EDA grant rate is 75 percent. The recipient's share of the cost of a levee

rehabilitation project for which assistance is made available by EDA shall be:

- To provide all land, easements, rights-of-way, and dredged material disposal areas necessary for the project; and
- To provide 25 percent of the costs of construction on the project of which at least 5 percent shall be paid in cash.

Funding Instrument

Awards will be made as grants in accordance with the requirements of Title I, Title IV, or Title IX of the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89-136; 42 U.S.C. 3121 *et seq.*) (PWEDA). The appropriate program authority for grant application and award will be determined by EDA based on the nature of the project and the eligibility of the area.

Eligible Applicants

Eligible applicants include any of the states or political subdivisions thereof, including municipalities and quasi-public corporations and authorities, Indian tribes, and nonprofit corporations representing an EDA designated area or part thereof located in areas affected by the Midwest Floods of 1993.

Project Criteria

An invitation to submit an application does not assure EDA funding. Factors that will be considered in evaluating proposals include if, and to what extent, the proposed project meets the selection criteria. Selection criteria will not be assigned weights. However, a key selection criterion will be the nature of the critical public infrastructure that is protected by the levee.

Corps of Engineers Criteria

Levees which are within the Corps' geographic area of responsibility (i.e., contributing drainage areas of 400 square miles or greater) that were ineligible to receive assistance because of the lack of participation by a public sponsor prior to the Midwest Floods of 1993, will be eligible for assistance from EDA, provided that:

- It is demonstrated that the levee protects "critical" public infrastructure;
- A public sponsor is identified that can demonstrate sufficient financial capability to comply with the requirements of this section;
- The levee rehabilitation otherwise meets the requirements established by the Corps for design, operation, maintenance;

- It is demonstrated that the benefits derived from repair or reconstruction of the levee will exceed the repair costs; and
- The public sponsor agrees to include its levee in the Corps' program and enters into a written agreement acknowledging that future Federal assistance will be conditional upon the public sponsor's continued participation in the program (future assistance will be forthcoming under the Corps' Public Law 84-99 Emergency Levee Program).
- The proposed work consists primarily and essentially of repairs to an existing levee.

Selection Criteria

It is anticipated that the funds announced herein for repairing levees may not be sufficient to repair all the levees for which requests are received. EDA will use the following criteria to select the levees to be repaired: (1) The critical nature of the infrastructure protected by the levee, (2) environmental impact, (3) past performance of the applicant regarding operation and maintenance of the existing levee, (4) the applicant's ability to ensure proper and efficient administration of the levee rehabilitation project and of satisfactory operation and maintenance of the levee in accordance with standards established by the Corps, (5) the feasibility of the project, cost and other factors considered, (6) the potential the project has for assisting in the long-term rehabilitation of the area, and (7) the extent to which the project will directly or indirectly tend to improve opportunities in the area for the establishment or expansion of industrial or commercial facilities or primarily benefit members of low-income families.

Application Process

EDA, working in conjunction and collaboration with the Corps, will screen preapplications to determine whether they can meet the criteria established above before inviting formal applications. After all requests have been screened, EDA will notify the Corps regarding the potential projects for which a site inspection, Damage Survey Report and Cost-Benefit Analysis are required.

Following the review of the preapplications and the Damage Survey Reports and Cost-Benefit Analysis, EDA will invite those entities whose projects are selected for consideration to submit full applications.

Except as modified herein, application procedures, competitive

selection criteria and post approval project implementation information for the applicable assistance are described in the **Federal Register** of January 11, 1993, (58 FR 3800) announcing EDA's Notice of Availability of Funds for FY 1993.

Dated: December 22, 1993.

Wilbur F. Hawkins,

Acting Assistant Secretary for Economic Development.

Appendix A

Contact the appropriate Economic Development Representative or EDA Regional Office listed below:

Denver Regional Office (ND, NE, SD, IA, MO, KS)

Economic Development Administration,
Denver Regional Office, Room 670,
1244 Speer Boulevard, Denver, CO
80204, Telephone: (303) 844-4714

Denver Region Economic Development
Representatives (EDR)

North Dakota

Cornelius Grant, Disaster Field Office,
P.O. Box 1911, Bismarck, ND
58501, Telephone: (701) 250-4321

South Dakota and Nebraska

Warren Albertson, Federal Building,
Room 219, Pierre, SD 57501,
Telephone: (605) 224-8280

Iowa

Robert Cecil, Federal Building, Room
593A, 210 Walnut Street, Des
Moines, IA 50309, Telephone: (515)
284-4746

Missouri

Forrest Koch, Robert A. Young
Building, Room 8.308H, 1222
Spruce Street, St. Louis, MO 63103,
Telephone: (314) 539-2321

Kansas

John Zender, Room 632, 1244 Speer
Boulevard, Denver, CO 80204,
Telephone: (303) 844-4902

Chicago Regional Office (WI, MN, IL)

Economic Development Administration,
Chicago Regional Office, Suite 855,
111 North Canal Street, Chicago, IL
60606-7204, Telephone: (312) 353-
7706

Chicago Region Economic Development
Representatives, (EDR)

Wisconsin

Jack D. Price, Suite 114, 1320 West
Clairemont Avenue, Eau Claire, WI
54701-6026, Telephone: (715) 834-
4079

Minnesota

John B. Arnold, III, 104 Federal
Building, 515 West First Street,
Duluth, MN 55802, Telephone:
(218) 720-5326

Illinois

Alfred L. Casals, 509 West Capitol,
Suite 204, Springfield, IL 62704,
Telephone: (217) 492-4224

[FR Doc. 93-31632 Filed 12-28-93; 8 45 am]

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Federal Register

Wednesday
December 29, 1993

Part VI

Department of Health and Human Services

Administration for Children and Families

Mitigation of Environmental Impacts to
Indian Lands Due to Department of
Defense Activities; Availability of
Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Program Announcement No. 93612-943, Availability of Financial Assistance for the Mitigation of Environmental Impacts to Indian Lands due to Department of Defense Activities.

AGENCY: Administration for Native Americans, Administration for Children and Families, Department of Health and Human Services.

ACTION: Announcement of availability of competitive financial assistance to assist eligible applicants address environmental problems and impacts from Department of Defense activities to Indian lands.

DEFINITION: For purposes of this program announcement, Indian lands is defined as all lands of American Indian tribes and Alaska Native Villages.

SUMMARY: The Congress has recognized that Department of Defense activities may have caused environmental problems for Indian tribes and Alaska Natives. These environmental hazards can negatively impact the health and safety as well as their social and economic welfare. Accordingly, the Congress has taken steps to help those affected begin to mitigate environmental impacts from Department of Defense activities by assisting them in the planning, development and implementation of programs for such mitigation.

This program announcement is initiated in response to the Department of Defense Appropriations Act (the Act), Public Law 103-139, which was enacted on November 11, 1993. Section 8094A of the Act states, of the funds appropriated to the Department of Defense for Operation and Maintenance, Defense-Wide, not less than \$8,000,000 shall be made available until expended to the Administration for Native Americans within 90 days of enactment of this Act only for the mitigation of environmental impacts, including the gathering of information, documenting of environmental damage, and developing a system for prioritization of mitigation on Indian lands resulting from Department of Defense activities.

The Administration for Native Americans (ANA) and the Department of Defense (DOD) have entered into an Interagency Agreement to facilitate carrying out this Congressional mandate. Through this Interagency Agreement, the ANA and DOD

announce the availability of FY 1994 funds for eligible applicants to begin the process of addressing the environmental problems and damage caused from defense activities.

FOR FURTHER INFORMATION CONTACT: Sharon McCully—(202) 690-5780, Rita LeBeau—(202) 690-5790, Administration for Native Americans, Department of Health and Human Services, 200 Independence Avenue, SW., room 348F, Washington, DC 20201-0001.

DATES: The closing date for submission of applications is August 26, 1994.

A. Introduction and Purpose

The program announcement states the availability of fiscal year 1994 financial assistance to eligible applicants using funds provided by the Department of Defense through the Administration for Native Americans for the purpose of mitigating environmental impacts on Indian lands related to Department of Defense activities.

Financial assistance awards made under this program announcement will be on a competitive basis and the proposals will be reviewed against the evaluation criteria in this announcement.

The Federal government recognizes that substantial environmental problems, resultant from defense activities, exist on Indian lands and will geographically range from border to border and from coast to coast. The nature and magnitude of the problems will most likely be better defined when affected Indian tribes and Alaska Natives have completed environmental assessments called for in Phase I of this four-phase program.

The Federal government has also recognized that Indian tribes, Alaska Natives and their tribal organizations must have the opportunity to develop their own plans and technical capabilities and access the necessary financial and technical resources in order to assess, plan, develop and implement programs to mitigate any impacts caused by Department of Defense activities.

The Administration for Native Americans (ANA) and the Department of Defense (DOD) recognize the potential environmental problems created by DOD activities that may affect air, water, soil and human and natural resources (i.e., forests, fish, plants). It is also recognized that potential applicants may have specialized knowledge and capabilities to address specific concerns at various levels within the four phase program. Under this announcement proposals

will be accepted for any and all of the four phases or one specific phase.

The following are some known areas of concern. It is expected that applicants may identify additional areas of concerns in their applications:

- Damage to treaty protected spawning habitats caused by artillery practice or other defense activities;
- Damage to Indian lands and improvements (e.g., wells, fences) and facilities caused by bombing practice;
- Damage caused to range and forest lands by gunnery range activities;
- Low-level flights over sacred sites and religious ceremonies which disrupt spiritual activities;
- Operation of dams by the Army Corps of Engineers which has had adverse impacts on spawning beds and treaty fishing rights and water quality due to problems of siltation; reduced stream flows; increased water temperatures; and, dredge and fill problems;
- Leaking of underground storage tanks on lands taken from Indians for temporary war-time use by the Department of Defense;
- Unexploded ordnance from gunnery and bombing practice on Indian lands resulting in significant damage to rangelands, wildlife habitat, stock water wells, etc.;
- Disposal activities related to removal of unexploded ordnance, nuclear waste materials, toxic materials, and biological warfare materials from Indian lands;
- Transportation of live ordnance, nuclear waste, chemical and biological warfare materials from and across Indian lands;
- Seepage of fluids suspected of containing toxic materials onto Indian lands;
- Chlorofluorocarbons (CFC's) resulting from abandoned containers and/or dumping onto Indian lands;
- Polychlorinated biphenyls (PCB's) from transformers which have been abandoned and/or dumped onto Indian lands;
- Public health concerns regarding electromagnetic fields surrounding Defense-related transmission facilities which cross Indian lands; and
- Reclamation activities required to mitigate any or all of the above stated conditions and other activities as they become known.

It is anticipated that mitigation efforts will involve four phases of work: Phase I—assessment of Indian lands to develop as complete an inventory as possible of environmental impacts caused by Department of Defense activities; Phase II—identification and exploration of alternative means for

mitigation of these impacts and determination of the technical merit, feasibility and expected costs and benefits of each approach in order to select one approach; Phase III—development of a detailed mitigation plan, and costing and scheduling for implementation of the design, including strategies for meeting statutory or regulatory requirements and for dealing with other appropriate Federal agencies; and, Phase IV—implementation of the mitigation plan.

B. Proposed Projects to be Funded in FY 1994

The purpose of this announcement is to invite single year or up to thirty-six month proposals from eligible applicants to undertake any or all of the Phases.

Applicants may apply for projects of up to 36 months duration. A multi-year project, requiring more than 12 months to develop and complete, affords applicants the opportunity to develop more complex and in-depth projects. Funding after the first 12 month budget period of an approved multi-year project is non-competitive and subject to availability of funds. (see Part E for further information)

Phase I

The purpose of Phase I is to conduct the research and planning needed to identify environmental impacts to Indian lands caused by Department of Defense activities on or near Indian lands and to plan for remedial investigations to determine and carry out a preliminary assessment of these problems. These activities may include, but not be limited to, the following:

- Conduct site inspections to identify problems and causes related to DOD activities;
- Identify and develop approaches to handle raw data that will assist in performing comprehensive environmental assessments of problems and causes related to DOD activities;
- Identify approaches and develop methodologies which will be used to develop the activities to be undertaken;
- Identify other Federal agency programs, if any, that must be involved in mitigation activities and their requirements;
- Identify potential technical assistance and expertise required to address the activities to be undertaken; and
- Identify other Federal environmental restoration programs that could be accessed to cooperatively coordinate and mobilize resources in addressing short and long-term activities developed under Phase III.

Phase I should result in adequately detailed documentation of the problems and sources of help in solving them to provide a useful basis for examining alternative mitigation approaches in Phase II.

Phase II

The purpose of Phase II activities is to examine alternative approaches for mitigation of the impacts identified in Phase I and to lead toward the mitigation design to be developed in Phase III. Phase II activities may include, but need not be limited to the following:

- Conduct remedial investigation and/or feasibility studies as necessary;
- Plan for the design of a comprehensive mitigation strategy to address problems identified during Phase I which address areas such as land use restoration, clean-up processes, contracting and liability concerns; regulatory responsibilities; and resources necessary to implement clean up actions;
- Design strategies that coordinate with or are complementary to existing DOD cleanup programs such as the defense Environmental Restoration Program which promotes and coordinates efforts for the evaluation and cleanup of contamination at DOD installations;
- Review possible interim remedial strategies that address immediate potential hazards to the public health and environment in order to provide alternative measures i.e., providing alternate water supplies, removing concentrated sources of contaminants, or constructing structures to prevent the spread of contamination;
- Identify specific types of technical assistance and management expertise required to assist in developing specific protocols for environmental assessments, remedial investigations, feasibility studies, interim remedial actions and strategic planning for existing and future mitigation activities;
- Review other types of assessments that need to be considered, reviewed and incorporated into the conduct and/or design process such as:
 - Estimates of clean-up cost;
 - Estimate of impacts of short-term approach;
 - Estimate of impacts of long-term approach;
 - Cultural impacts;
 - Economic impacts;
 - Human health-risk impacts; and
- Document approaches and procedures which have been developed in order to negotiate with appropriate Federal agencies for necessary cleanup action and to keep the public informed.

In establishing the basis for a design process, particularly when there are multiple problems, the applicants may want to consider a prioritization process as follows:

- Emergency situations that require immediate clean-up;
- Time-critical sites, i.e. sites where the situation will deteriorate if action is not taken soon;
- Projects with minimum funding requirements;
- Projects with intermediate-level funding requirements;
- Projects with maximum funding requirements.

Achieving compliance with Federal environmental protection legislation is the driving force behind all Federal clean-up activities. The following is a list of major Federal environmental legislation that should be recognized in a regulatory review as all Federal, state and local regulatory requirements which could have major impacts in the design of mitigation strategies:

- Indian Environmental General Assistance Program Act of 1992;
- Clean Air Act (CAA);
- Clean Water Act (CWA);
- Safe Drinking Water Act (SDWA);
- Surface Mining Control and Reclamation Act of 1977 (SMCRA);
- Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA);
- Toxic Substances Control Act (TSCA);
- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);
- Nuclear Waste Policy Act of 1982 (NWPA);
- Comprehensive Environmental Resource Conservation and Liability Act (CERCLA or Superfund);
- Resource Conservation and Recovery Act of 1976 (RCRA);
- Hazardous and Solid Waste Amendments of 1984 (HSWA);
- National Environmental Policy Act of 1969 (NEPA);

Other Federal legislation that should be included in the regulatory review and that should be of assistance are the tribal specific legislative acts, such as:

- American Indian Religious Freedom Act;
- National Historic Preservation Act of 1991;
- Indian Environmental Regulatory Enhancement Act of 1990;

Other regulatory considerations could involve applicable tribal, village, state and local laws, codes, ordinances, standards, etc. which should also be reviewed to assist in planning, the mitigation design, and development of the comprehensive mitigation strategy.

Phase II should result in a carefully documented examination of alternative

approaches and the selection of an approach to be used in the Phase III design process.

Phase III

The purpose of Phase III is the completion of activities initiated under Phase II, the initiation of new activities required to implement programs, and the design of on-site actions required to mitigate environmental damage from DOD activities.

The Phase III activities may include but need not be limited to:

- Development and implementation of a detailed management plan to: Guide corrective action; resolve issues rising from overlapping or conflicting jurisdictions; guide a cooperative and collaborative effort among all parties to ensure there are no duplicative or conflicting regulatory requirements governing the cleanup actions; and, establish a tribal or village framework and/or parameter(s) that will guide the negotiations process for one or multiple cleanup actions;

- Establishment of priorities for mitigation programs when there are multiple clean-up sites; consider at a minimum the nature of the hazard involved: such as its physical and chemical characteristics, including concentrations and mobility of contaminants; the pathway indicating potential for contaminant transport via surface water, ground water and air/soil, and any other indicators that are identified during the environmental assessment, including the prioritization process identified under Phase II;
- Program design and implementation of information dissemination strategies prior to start up of on-site implementation of mitigation program activities;

- Development of a legal and jurisdictional strategy that addresses DOD/contractor liability issues to ensure quality, cost-effective mitigation services, and to evaluate any measures providing equitable risk between the DOD and the remediation contractor, as well as to incorporate Tribal Employment Rights Office (TERO) and other policies and procedures, if required;

- Design of an approval process and other processes necessary for the implementation of tribal and village codes and regulations for current and future compliance enforcement of all mitigation actions;

- Development/design of a documentation strategy to ensure all DOD and contractor cleanup activities are conducted and completed in an environmentally clean and safe manner for the social and economic welfare, as

well as public health of Indian and Alaska Native people and the surrounding environment;

- Development and conduct of certified training programs that will enable a local work force to become technically capable to participate in the mitigation activities, if they so choose; and

- Conduct of any other activities deemed necessary to carry out Phase I, II and III activities.

Phase III should result in a comprehensive plan for conducting all aspects of mitigation action contemplated.

Phase IV

The Phase IV activities are the implementation of mitigation plans specified in the detailed plan completed in Phase III.

C. Eligible Applicants

The following organizations are eligible to apply:

- Federally recognized Indian tribes;
- Incorporated Non-Federally and State recognized Indian tribes;

- Alaska Native villages, tribes or tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs in the **Federal Register** Notice dated October 21, 1993;

- Nonprofit Alaska Native Regional Associations and/or Corporations with village specific projects;

- Nonprofit Native organizations in Alaska with village specific projects;

- Other tribal or village organizations or consortia of Indian tribes.

In addition, current ANA grantees who meet the above eligibility criteria are also eligible to apply for a grant award under this program announcement.

D. Available Funds

Subject to availability of funds, approximately \$8 million of financial assistance is available in FY 1994 under this program announcement for eligible applicants.

Each eligible applicant described above (Part C) can receive only *one* grant award under this announcement.

E. Multi-Year Projects

This announcement is soliciting applications for project periods up to 36 months. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be as long as 36 months. Funding after the 12 month budget period of an approved multi-year project is non-competitive. The non-competitive funding for the second and third years is contingent

upon the grantee's satisfactory progress in achieving the objectives of the project according to the approved work plan, the availability of Federal funds, compliance with the applicable statutory, regulatory and grant requirements, and determination that continued funding is in the best interest of the Government.

F. Grantee Share of Project

Grantees must provide at least five (5) percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting \$300,000 in Federal funds (based on an award of \$100,000 per budget period), must include a match of at least \$15,789 (5% total project cost). Applicants may request a waiver of the requirement for a 5% non-Federal matching share (See 45 CFR part 1336, Subpart E—Financial Assistance Provisions).

It is the policy of ANA to apply the waiver of the non-Federal matching share requirement for the purposes of this particular program announcement.

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. Application Process

(1) Availability of Application Forms: In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied, including Form-424, and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, Room 348F, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201-0001, Attention: Rita LeBeau—(202) 690-5790.

(2) Application Submission: Each application should include one signed original and two (2) copies of the grant application, including all attachments. These include the forms on: drug free workplace; debarment; and anti-lobbying. Assurances and certifications must be completed. The application must be hand delivered or mailed by the closing date to: Department of Health and Human Services, Administration for Children and Families, Division of

Discretionary Grants, Room 341-F-1, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201-0001, Attention: ANA 93612-943.

The application must be signed by an individual authorized: 1) to act for the applicant tribe, village or organization, and 2) to assume the applicant's obligations under the terms and conditions of the grant award.

(3) Application Consideration: The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. An independent review panel consisting of reviewers familiar with environmental problems of Indian tribes and Alaska Native villages will evaluate each application against the published criteria in this announcement. The results of this review will assist the Commissioner in making final funding decisions.
- The Commissioner's decision will also take into account the comments of ANA staff, state and Federal agencies having performance related information, and other interested parties.
- As a matter of policy the Commissioner will make grant awards consistent with the stated purpose of this announcement and all relevant statutory and regulatory requirements under 45 CFR parts 74 and 92 applicable to grants under this announcement.
- After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within approximately 120 days of the closing date. Successful applicants are notified through an official Financial Assistance Award (FAA) document. The Administration for Native Americans staff cannot respond to requests for funding decisions prior to the official notification to the applicants. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and

the amount of the non-Federal matching share requirement.

I. Review Process and Criteria

Applications submitted by the post-marked date under this program announcement will undergo a pre-review to determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement.
- The application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation. (All required materials and forms are listed in the Grant Application Checklist.)

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the evaluation criteria. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success. A proposed project should reflect the purposes stated and described in the *Introduction and Program Purpose* (Section A) of this announcement. The evaluation criteria are:

(1) Goals and Available Resources (15 points)

(a) The application presents specific mitigation goals related to the proposed project. It explains how the tribe or village intent to achieve these goals has been identified and clearly documents the involvement and support of the community in the planning process and implementation of the proposed project.

(b) Available resources (other than ANA) which will assist, and be coordinated with the project are described. These resources may be personnel, facilities, vehicles or financial and may include other Federal and non-Federal resources.

(2) Organizational Capabilities and Qualifications (10 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly demonstrates the successful management of prior or current projects of similar scope by the organization and/or by the individuals designated to manage the project.

(b) Position descriptions or resumes of key personnel, including those of consultants, are presented. The position descriptions and resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe the position and its duties and clearly relate to the personnel staffing required for

implementation of the project activities. Either the position descriptions or the resumes present the qualifications that the applicant believes are necessary for overall quality management of the project.

(3) Project Objectives, Approach and Activities (45 points)

The Objective Work Plan in the application includes project objectives and activities related to the long term goals for each budget period proposed and demonstrates that these objectives and activities:

- Are measurable and/or quantifiable;
- Are based on a fully described and locally determined balanced strategy for mitigation of impacts to the environment;
- Clearly relate to the tribe or village long-range goals which the project addresses;
- Can be accomplished with available or expected resources during the proposed project period;
- Indicate when the objective, and major activities under each objective will be accomplished;
- Specify who will conduct the activities under each objective; and
- Support a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected (20 points)

The proposed project will result in specific measurable outcomes for each objective that will clearly contribute to the completion of the project and will help the tribe or village meet its goals. The specific information provided in the application on expected results or benefits for each objective is the basis upon which the outcomes can be evaluated at the end of each budget year.

(5) Budget (10 points)

There is a detailed budget provided for each budget period requested. (This is especially necessary for multi-year applications.) The budget is fully explained. It justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Sufficient cost and other detail is included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project.

J. Guidance to Applicants

The following is provided to assist applicants to develop a competitive application.

(1) Program Guidance

- The Administration for Native Americans will fund projects that present the strongest prospects for meeting the stated purposes of this program announcement. Projects will not be funded on the basis of need alone.
- In discussing the problems being addressed in the application, relevant historical data should be included so that the appropriateness and potential benefits of the proposed project will be better understood by the reviewers and decision-maker.
- Supporting documentation, if available, should be included to provide the reviewers and decision-maker with other relevant data to better understand the scope and magnitude of the project.
- The applicant should provide documentation showing support for the proposed project from authorized officials, board of directors and/or officers through a letter of support or resolution. It would be helpful, particularly for organizations, to delineate the membership, make-up of the board of directors, and its elective procedures to assist reviewers in determining authorized support.

(2) Technical Guidance

- Applicants are strongly encouraged to have someone other than the author apply the evaluation criteria in the program announcement and to score the application prior to its submission, in order to gain a better sense of its quality and potential competitiveness in the review process.
- ANA will accept only one application under this program announcement from any one applicant. If an eligible applicant sends two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.
- An application from an Indian tribe, Alaska Native Village or other eligible organization must be submitted by the governing body of the applicant.
- The application's Form 424 must be signed by the applicant's representative (tribal official or designate) who can act with full authority on behalf of the applicant.

- The Administration for Native Americans suggests that the pages of the application be numbered sequentially from the first page and that a table of contents be provided. The page numbering, along with simple tabbing of the sections, would be helpful and allows easy reference during the review process.

- Two (2) copies of the application plus the original are required.
- The Cover Page should be the first page of an application, followed by the one-page abstract.
- Section B of the Program Narrative should be of sufficient detail as to become a guide in determining and tracking project goals and objectives.
- The applicant should specify the entire length of the project period on the first page of the Form 424, Block 13, not the length of the first budget period. ANA will consider the project period specified on the Form 424 as governing.
- Line 15a of the Form 424 should specify the Federal funds requested for the first *Budget period*, not the entire project period.
- Applicants proposing multi-year projects need to describe and submit project objective workplans and activities for each budget period. (Separate itemized budgets for the Federal and non-Federal costs should be included).
- Applicants for multi-year projects must justify the entire timeframe of the project and also project the expected results to be achieved in each budget period and for the total project period.

(3) Projects or activities that generally will not meet the purposes of this announcement

- Proposals from consortia of tribes or villages that are not specific with regard to support from, and roles of member tribes.
- The purchase of real estate or construction.

K. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96-511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant

applications under the Program Narrative Statement by OMB.

L. Due Date for Receipt of Applications

The closing date for applications submitted in response to this program announcement is August 26, 1994.

M. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section H, Application Process: Application Submission.

The Administration for Native Americans will not accept applications submitted via facsimile (FAX) equipment.

Deadline

Applications shall be considered as meeting the announced deadline if they are either:

1. Received on or before the deadline date at the place specified in the program announcement, or
2. Sent on or before the deadline date and received by the granting agency in the time for the independent review under DHHS GAM Chapter 1-62 (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private Metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications

Applications which do not meet the criteria above are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines

The granting agency may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

(Catalog of Federal Domestic Assistance Program Number 93.612 Native American Programs)

Dated: December 21, 1993.

Dominic J. Mastrapasqua,
Acting Commissioner, Administration for
Native Americans.

BILLING CODE 4184-01-M.

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 | Item | Entry |
|-------|--|------|--|
| 1. | Self-explanatory. | 12. | List only the largest political entities affected (e.g., State, counties, cities) |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). | 13. | Self-explanatory |
| 3. | State use only (if applicable). | 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. | 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 <u>only</u> 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. |
| 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. | 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. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 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. |
| 7. | Enter the appropriate letter in the space provided. | 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.) |
| 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. | | |

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BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (j)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

SECTION B - BUDGET CATEGORIES

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$
l. Program Income	\$	\$	\$	\$	\$

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Prescribed by (33) Circular A 102

SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8.	\$	\$	\$	\$	\$
9.					
10.					
11.					
12. TOTALS (sum of lines 8 and 11)	\$	\$	\$	\$	\$
SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year				
	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
13. Federal	\$	\$	\$	\$	
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program	FUTURE FUNDING PERIODS (Years)				
	(b) First	(c) Second	(d) Third	(e) Fourth	
16.	\$	\$	\$	\$	
17.					
18.					
19.					
20. TOTALS (sum of lines 16-19)	\$	\$	\$	\$	
SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)					
21. Direct Charges:				22. Indirect Charges:	
23. Remarks					

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary
Lines 1-4, Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j — Show the amount of indirect cost.

Line 6k — Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A (continued)

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

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ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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- 10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
- 11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
- 12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- 13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
- 14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- 15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
- 16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
- 17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
- 18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED	

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code) _____

Check if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Certification Regarding Debarment, Suspension, and Other
Responsibility Matters - Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and
Voluntary Exclusion - Lower Tier Covered Transactions
(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions. "without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying**Certification for Contracts, Grants, Loans,
and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the require statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature

Title

Organization

Date

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

<p>1. Type of Federal Action:</p> <p><input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action:</p> <p><input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award</p>	<p>3. Report Type:</p> <p><input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change</p> <p>For Material Change Only: year _____ quarter _____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:</p> <p>Congressional District, if known: _____</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known: _____</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> <p>\$ _____</p>	
<p>10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):</p> <p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</p> <p style="text-align: center;"><small>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</small></p>		
<p>11. Amount of Payment (check all that apply):</p> <p>\$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p>	<p>13. Type of Payment (check all that apply):</p> <p><input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____</p>	
<p>12. Form of Payment (check all that apply):</p> <p><input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____</p>		
<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</p> <p style="text-align: center;"><small>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</small></p>		
<p>15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>		
<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____ Date: _____</p>		<p>Federal Use Only:</p>
		<p>Authorized for Local Reproduction Standard Form - LLL</p>

Federal Register

**Wednesday
December 29, 1993**

Part VII

**Department of
Transportation**

Federal Aviation Administration

14 CFR Part 73

**Establishment of Warning Areas in the
Airspace Overlying the Waters Between 3
and 12 Nautical Miles From the United
States; Rule**

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 73**

[Docket No. 25767; Special Federal Aviation Regulation (SFAR) No. 53-3]

Establishment of Warning Areas in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; extension of expiration date; request for comments.

SUMMARY: This action continues for an additional 24 months the effectiveness of warning areas established in airspace subject to FAA jurisdiction in order to reflect presidential action extending the territorial sea of the United States, for international purposes, from 3 to 12 nautical miles from the coast of the United States. The warning areas were established in the same location as nonregulatory warning areas previously designated over international waters. The Department of Defense (DOD) conducts hazardous military flight activities in these areas. The warning areas were established for an initial period of 1 year to permit the FAA to consider the need for rulemaking action to meet military training needs in this airspace. The establishment of those areas was extended by subsequent rulemakings to allow the DOD sufficient time to analyze its needs in the affected airspace and present its recommendations to the FAA. At this time, the DOD has not finalized its airspace analysis and usage projections. This action, therefore, continues the effectiveness of warning areas while airspace analyses and rulemaking efforts are ongoing.

DATES: Effective date: December 27, 1993. Expiration date: January 15, 1996. Comment date: Comments must be received on or before February 28, 1994.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration Office of the Chief Counsel; Attention: Rules Docket (AGC-200), Docket No. 25767, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 25767. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Melodie De Marr, Air Traffic Rules and Regulations, ATP-230, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, DC 20591, Telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION**Comments Invited**

Interested persons are invited to participate in the rulemaking process by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this amendment are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or amendment number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator. This final rule may be changed in light of comments received. All comments received 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 substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25767." The postcard will be date stamped and mailed to the commenter.

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

Presidential Proclamation No. 5928, signed on December 27, 1988, extended the sovereignty of the United States government, for international purposes, over the territorial seas from 3 to 12 nautical miles from the coast of the United States (including its territories). By final rule issued on that same date,

the FAA amended parts 71 and 91 of the Federal Aviation Regulations to extend controlled airspace and the applicability of general flight rules to the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States (54 FR 264; January 4, 1989). The FAA amended part 71 by extending the Continental Control Area, the Alaskan Positive Control Area, and the Continental Positive Control Area to 12 nautical miles from the U.S. Coast. The FAA amended part 91 by extending the applicability of subpart A, sections 91.1 through 91.43, and all of subpart B, to 12 nautical miles from the U.S. coast.

When the airspace was considered to be over international waters, military aircraft were not prohibited from conducting hazardous training activities within this area. Warning areas were designated in this airspace to provide notice to nonparticipating pilots of the location of hazardous military training operations. However, nonparticipating pilots were not restricted from operating in these areas.

Upon the extension of part 91 operating rules to this airspace, the DOD would have been prohibited from hazardous flight activities without an exemption from the regulations or the designation of an airspace category for that purpose. Warning areas established in international airspace, under FAA internal procedures, do not in themselves authorize hazardous activities. An interruption of military operations normally conducted in warning areas would have an adverse impact on national defense. An exemption would permit the continuation of military operations, but would not in itself adequately inform the general flying public of the existence of these activities. Accordingly, by regulation the FAA established warning areas to permit the continuation of existing military training activities in the same areas where those activities were and are still being conducted.

To preclude the interruption of ongoing DOD training activities in that airspace while the issue was studied and resolved, the FAA amended part 73 by promulgating SFAR 53. SFAR 53 established warning areas in the airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast by final rule (54 FR 260; January 4, 1989) for an initial period of 1 year to permit the FAA to consider the need for rulemaking action to meet military training needs in this airspace. The warning areas established by SFAR 53 are unique airspace designations intended solely to allow the continuation of military training activity and to maintain the right of

nonparticipating aircraft to fly through such areas. Controlled flights are not affected by SFAR 53, as such flights will continue to be routed around active warning areas. This action maintains the existing level of safety since it allows military training activity to continue without interruption.

Warning area designations and descriptions are not contained in the Code of Federal Regulations (CFR). For Federal Register citations affecting the warning areas, see the List of CFR Sections Affected in the Finding Aids section of 14 CFR part 73.

On December 27, 1989, the FAA, at the request of the DOD, extended the expiration date of SFAR 53 to December 27, 1990. The DOD stated that this delay would enable it, in consultation with the FAA, to determine the best course of implementation of regulatory special use airspace (54 FR 51286; December 13, 1989).

On May 8, 1990, the DOD submitted a letter to the FAA requesting a legal opinion from the Office of the Chief Counsel regarding the feasibility of creating a new category of airspace to maintain the status quo. The DOD suggested the creation of "domestic warning areas." The DOD claimed that it would incur excessive costs if special use airspace is extended to 12 nautical miles from the U.S. coast in the form of increased fuel costs for transient flight time and costs affiliated with environmental analysis, etc.

On December 27, 1990, the FAA extended the expiration date of SFAR 53 for an additional 3 years to December 27, 1993. The DOD stated it was continuing to assess the impact of the expansion of the territorial airspace on military operations. The DOD had completed a survey of individual command training and operational requirements for this airspace to determine the areas that should be converted to another form of regulatory or nonregulatory special use airspace. However, development of a proposed airspace configuration was incomplete. Preliminary results indicate that, in a number of areas, there will be a continuing need for special use airspace to provide connectivity for hazardous operation, such as DOD and National Aeronautics and Space Administration (NASA) missile launches, and to encompass existing range resources located between 3 and 12 nautical miles offshore.

A number of events have precluded the DOD from completing its study of operational needs in the airspace over the coastal waters. The magnitude of the task of assessing the training needs of the military in the airspace between 3

and 12 nautical miles from the U.S. coast is in itself a formidable task. However, in the past year a significant number of military bases have been targeted for closure further impacting the projected utilization of warning areas as military aviation units are relocated or eliminated. The FAA acknowledges that the long-range effects of the base closures on military training needs and airspace requirements are difficult to assess. The DOD is in the process of identifying warning area segments that are critical to those training needs, as well as those segments that are no longer needed.

Based on representation from the DOD, the FAA expects to see the DOD recommendations for the disposition of the airspace within 3 to 12 miles off the U.S. coast within 6 to 9 months after the date of this extension. This action continues the effectiveness of SFAR 53 for an additional 24 months to: (1) Prevent any interruption of ongoing military training activity; (2) warn nonparticipating aircraft of possible hazardous activities while permitting the aircraft to fly through such areas; (3) permit the DOD additional time to finalize its airspace analysis and usage projections including any environmental assessments that may be necessary; and, (4) allow the FAA sufficient time to effect rulemaking or other action necessary to implement revision to the current warning areas after receipt of the DOD recommendations.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization Standards and Recommended Practices (SARP) to the maximum extent practicable. The FAA has determined that this rule will not present any differences with the SARP.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), there are no requirements for information collection associated with this rule.

Regulatory Evaluation

This SFAR does not alter the provision of air traffic control (ATC) services, nor does it have an impact on ATC system users. This special rule merely allows military training activity to continue without interruption, while permitting nonparticipating pilots to fly through such areas. Accordingly,

because the costs of the rule are so minimal, further regulatory evaluation has not been prepared. Although the FAA has initially determined that any possible costs imposed by this amendment will be minimal, we seek comments from the public on the possible impact of this rule.

Regulatory Flexibility Act Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that government regulations do not needlessly and disproportionately burden small businesses. The RFA requires the FAA to review each rule that may have "a significant economic impact on a substantial number of small entities."

The amendment will not alter the provision of air traffic control (ATC) services, nor will it have an impact on ATC system users. Hence, the amendment will not impose a significant cost on a substantial number of small entities.

Federalism Implications

The amendment set forth 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, the FAA has determined that this rule is not a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this regulation 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. This regulation is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations.

Effective Date of Final Rule

Since this action does not involve a change in the actual dimensions, configuration, or operating requirements of airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Furthermore, I find that good cause exists, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than 30 days to avoid confusion on the part of pilots operating in the warning areas.

List of Subjects in 14 CFR Part 73

Aviation safety, Special use airspace.

The Amendment

For the reasons set forth above, the FAA is amending 14 CFR part 73 as follows:

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending Special Federal Aviation Regulation No. 53 to revise the Applicability paragraph (which expires December 27, 1993), to read as follows:

Special Federal Aviation Regulation No. 53—Establishment of Warning Areas in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast

1. **Applicability.** This rule establishes warning areas in the same location as nonregulatory warning areas previously designated over international waters. This

special regulation does not affect the validity of any nonregulatory warning area which is designated over international waters beyond 12 nautical miles from the coast of the United States. This special regulation expires on January 15, 1996.

* * * * *

Issued in Washington, DC, on December 22, 1993.

Willis C. Nelson,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93-31858 Filed 12-23-93; 2 50 pm]

BILLING CODE 4910-13-M

Federal Register

**Wednesday
December 29, 1993**

Part VIII

**Department of the
Interior**

Fish and Wildlife Service

**Conservation of the Northern Spotted
Owl; Intent to Prepare an Environmental
Impact Statement; Notice**

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent to Prepare an Environmental Impact Statement on a Proposed Rule Pursuant to Section 4(d) of the Endangered Species Act for the Conservation of the Northern Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent and invitation to the scoping process.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (FWS) intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for a proposed special rule that would redefine the Federal protective measures for the northern spotted owl (*Strix occidentalis caurina*) on non-Federal lands in California, Oregon, and Washington. The FWS is also in the process of developing additional regulatory guidance regarding the incidental take of marbled murrelets and is actively considering the inclusion of such guidance in the proposed special rule for the northern spotted owl. Although the FWS takes the position that the National Environmental Policy Act (NEPA) does not apply to actions it takes under section 4 of the Endangered Species Act of 1973, as amended (ESA) (see *Pacific Legal Foundation v. Andrus*, 654 F.2d 829 (6th Cir. 1981), in this instance the FWS voluntarily has decided to do an EIS to accompany the proposed section 4(d) rule. This notice is being furnished consistent with the NEPA Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Public comments and participation in this scoping are solicited.

DATES: Written comments should be received by January 31, 1994.

ADDRESSES: Comments should be addressed to Mr. Marvin Plenert, Regional Director, Region 1, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181.

FOR FURTHER INFORMATION CONTACT: Mr. H. Dale Hall, Assistant Regional Director, Ecological Services, at the above address (503/231-6159); Mr. Kahler Martinson, EIS Team Leader, U.S. Fish and Wildlife Service (503/231-2254); at the above address; Mr. David C. Frederick, Special Rule Team Leader and State Supervisor, Washington State Office, 3704 Griffin Lane SE., suite 102, Olympia, Washington 98501 (206/753-9440); Mr.

Russell Peterson, State Supervisor, U.S. Fish and Wildlife Service, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266 (503/231-6179); or Mr. Wayne S. White, State Supervisor, U.S. Fish and Wildlife Service, 2800 Cottage Way, suite E-1803, Sacramento, California 95825 (916/978-4613).

SUPPLEMENTARY INFORMATION:

Definitions

"Activity center" is used to mean a site containing a nest tree or an area of concentrated breeding activity of a pair or resident single spotted owl. Such an activity center may also be called a "breeding or nesting area." For the purposes of this proposed rule, an activity center encompasses an area within a 1,000-foot radius (70 acres) of a nest site. Criteria for determining activity centers may be found in the Service-endorsed owl survey protocol.

"Adaptive management area" means the ten landscape units that were designated in Option 9 of the report, Forest Ecosystem Management: An Ecological, Economic, and Social Assessment, (USDA *et al.* 1993) for development and testing of technical and social approaches to achieving specific ecological, economic, and other social objectives.

"Dispersal" is defined to mean movements by juvenile spotted owls leaving their natal area to establish their own territory, movement of non-territorial singles, or displaced adults searching for new territories. Successful dispersal requires habitat conditions that provide foraging and roosting habitat and protection from predators during this period of movement.

"Federal reserve" is used to mean those Federal lands identified by the report, Forest Ecosystem Management: An Ecological, Economic, and Social Assessment, (USDA *et al.* 1993) in which timber harvests are either not allowed or are severely limited. There are two types of reserves: late-successional reserves, which encompass older forest stands, and riparian reserves, which consist of protected strips along the banks of rivers, streams, lakes, and wetlands which act as a buffer between these water bodies and areas where timber harvesting is allowed.

"Genetic isolation" means geographic conditions where populations of spotted owls are unable to interbreed (a) because of insufficient quality and/or quantity of dispersal habitat, (b) because of natural barriers to dispersal such as mountain ranges and large water bodies, or (c) because the numbers of breeding

spotted owls within a geographic area are too small.

"Home range area" means the area a spotted owl uses and traverses in the scope of normal activities to fulfill its biological needs during the course of its life span. For the purpose of this proposed rule, the median annual home range area, by province, are: 14,271 acres for the Olympic Peninsula province; 6,657 acres for the Western and Eastern Washington Cascades provinces; 4,766 acres for the Oregon Coast Ranges provinces; 2,955 acres for Western and Eastern Oregon Cascades; and 3,340 acres for the Oregon Klamath province and the range of the northern spotted owl in California.

"Matrix" is used to mean those Federal lands outside of the Congressionally and Administratively withdrawn areas, Federal reserves and Adaptive Management Areas identified in the report, Forest Ecosystem Management: An Ecological, Economic, and Social Assessment, (USDA *et al.* 1993). The Matrix is important for providing successful dispersal opportunities for northern spotted owls.

"Nesting, roosting, and foraging habitat" is those areas with the vegetative structure and composition necessary to assure successful nesting, roosting, and foraging activities by northern spotted owls and their prey organisms. The spatial area and distribution of this nesting, roosting, and foraging habitat will vary, given the different topographic, vegetational, and climatic conditions of spotted owl provinces. Habitat with these features is normally referred to as "suitable."

"Province" is used to mean one of eleven geographic areas for the northern spotted owl which have similar sets of biological and physical characteristics and processes; they result from the action of climate and geology that produces common patterns of soils and broad-scale vegetative communities.

Overview

The EIS will evaluate the environmental effects of a FWS proposal to issue a "special rule" pursuant to section 4(d) of the Endangered Species Act of 1973, as amended (ESA), for the northern spotted owl. This special rule would revise the incidental take prohibitions currently applicable to the owl on non-Federal lands pursuant to section 9 of the ESA. The FWS has developed a proposed action and three alternatives for a special rule. The primary focus of the alternatives is on take of northern spotted owls incidental to timber harvests on non-Federal lands in California, Oregon, and Washington. The proposed action and each of the

alternatives retains existing prohibitions against interstate and foreign commerce and the intentional killing of the northern spotted owl. Each alternative has differing effects on lands within the range of the northern spotted owl.

Under the proposed action, the FWS would issue a section 4(d) rule that would relieve or reduce Federal prohibitions against the take of northern spotted owls incidental to specific forest management activities on non-Federal lands in specifically identified geographic areas across the range of the owl. The section 4(d) rule would also propose to generally defer to Tribal resource regulations for timber management activities on Indian forest lands within Indian reservations. Moreover, in recognition of the State of California's comprehensive efforts to protect northern spotted owls, the FWS proposes to lift Federal prohibitions against incidental take of northern spotted owls from timber harvests in that State. Timber harvest activities that are conducted in accordance with California law would be freed from having to comply with a separate set of Federal prohibitions regarding incidental take of northern spotted owls. The FWS intends to periodically assess the continued adequacy of California law with regard to the northern spotted owl. If at some point in the future, California law became inadequate for maintaining northern spotted owls well distributed across their range, the FWS would reconsider the need for imposing separate Federal restrictions on the incidental take of the owl.

In Oregon and Washington, the proposed action would retain a high level of protection against the incidental take of northern spotted owls located on non-Federal lands in ten Special Emphasis Areas (SEAs). These areas were chosen to fill in gaps in Federal land ownership in support of the Federal owl conservation strategy outlined in Alternative 9 of the Draft Supplemental Environmental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (Draft SEIS) which is the preferred alternative for managing lands administered by the Forest Service and the Bureau of Land Management within the range of the northern spotted owl. Within these

Special Emphasis Areas, timber harvests generally would not be prohibited if they retain at least 40 percent of a home range area of a northern spotted owl as suitable nesting, roosting, and foraging habitat and did not otherwise "harm" an owl as that term is defined by the Fish and Wildlife Service at 50 CFR 17.3. Timber harvests that reduce suitable habitat to below 40 percent of a home range area would risk prosecution if "harm" to an owl occurs.

To develop this Notice of Intent, including a proposed action for a special rule for the northern spotted owl, the FWS considered (a) the level of protection the owl would be provided on Federal lands under Alternative 9 of the Draft SEIS; (b) the range, location, and number of northern spotted owls known to exist on non-Federal lands; and (c) the underlying State regulatory programs for forest practices in California, Oregon, and Washington.

The special rule to be proposed for the northern spotted owl is a direct result of the Forest Conference convened by President Clinton on April 2, 1993. After that conference, the President established a Forest Ecosystem and Management Assessment Team (FEMAT) to develop options for management of forest ecosystems on Federal lands in California, Oregon, and Washington. FEMAT developed ten management options which are outlined in the Team's report, *Forest Ecosystem Management: An Ecological, Economic, and Social Assessment* (USDA *et al.* 1993). The Bureau of Land Management (BLM), the Forest Service (FS), the Fish and Wildlife Service, the Environmental Protection Agency, and the National Marine Fisheries Service prepared a Draft Supplemental Environmental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (Draft SEIS) on all of the options developed by FEMAT. The Draft SEIS identified Alternative 9 as the preferred alternative.

After assessing the proposed Federal land management strategy outlined in Alternative 9 as it relates to the northern spotted owl, the FWS re-considered the need to maintain existing prohibitions for the northern spotted owl on non-Federal lands. The FWS now intends to propose a special rule that reflects this

re-consideration. An environmental impact statement will be prepared for the special rule.

Proposed Action

The FWS has developed a proposed action and three alternative approaches to a special rule for the northern spotted owl. A description of the proposed action and alternatives is included in this notice. Each alternative retains prohibitions against import and export, interstate and foreign commerce, and against the direct take of spotted owls. The alternatives primarily focus on the take of northern spotted owls incidental to timber harvest activities on non-Federal lands in California, Oregon, and Washington. The alternatives differ from each other by the degree to which they retain prohibitions against incidental take of northern spotted owls on non-Federal (that is, State and local government, Tribal, and private) lands.

The proposed action would relieve existing Federal prohibitions against incidental take of northern spotted owls associated with timber harvests on all non-Federal lands in California that are in compliance with State law, and would reduce such prohibitions for non-Federal lands in Oregon and Washington except on lands in ten Special Emphasis Areas (MAP 1). The ten Special Emphasis Areas that are proposed were selected because the Federal land base is inadequate (in terms of habitat quantity, habitat quality, or distribution) in a key area to conserve the northern spotted owl or to connect important populations of northern spotted owls. The Special Emphasis Areas that are proposed would occur in the following areas:

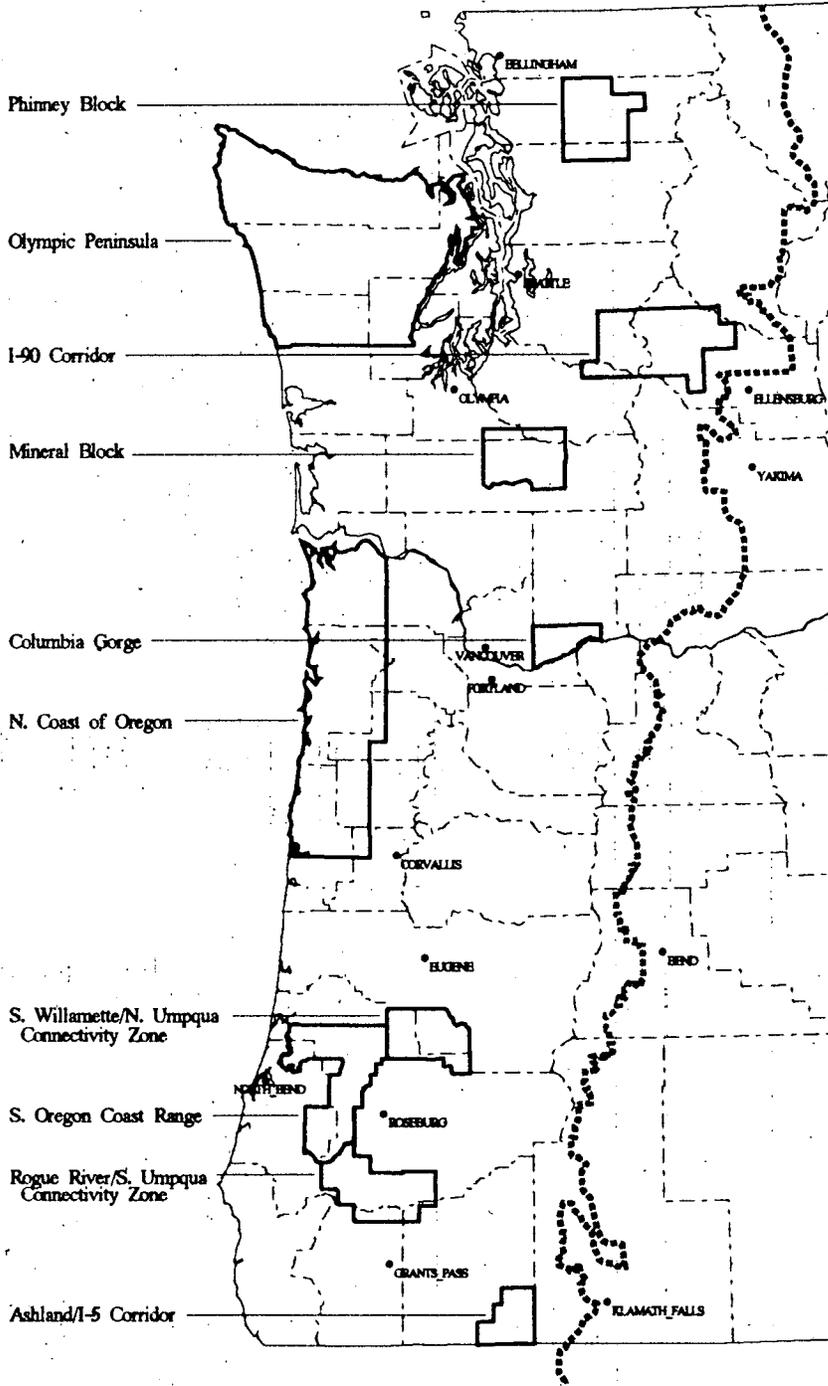
Oregon: The Ashland/I-5 area, south of Ashland, Oregon (MAP 2); the Rogue River/South Umpqua area of Oregon (MAP 3); the South Willamette/Northern Umpqua area (MAP 4); parts of the Southern Oregon Coast Range (MAP 5); and the North Coast Range (MAP 6).

Washington: The Columbia River Gorge (MAP 7); the Mineral Block south of the I-90 corridor (MAP 8); the I-90 corridor where it crosses the Cascade Mountains (MAP 9); the Olympic Peninsula (MAP 10); and the Phinney Block (MAP 11).

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SPECIAL EMPHASIS AREAS WASHINGTON & OREGON

Map 1

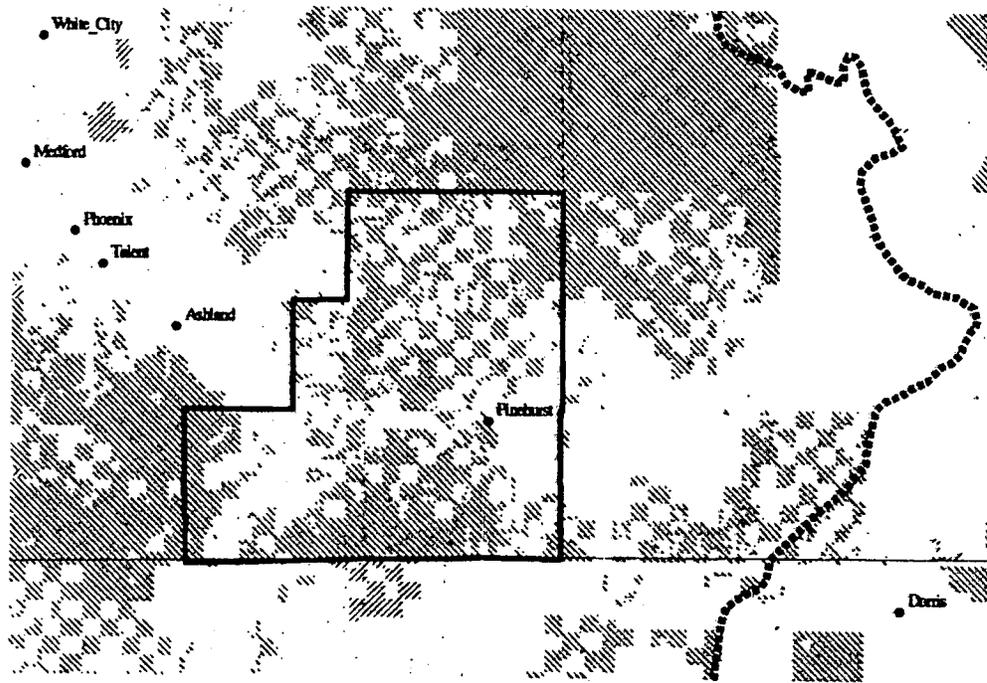


- 40 Rule Boundary
- County Boundary
- State Boundary
- Owl Range Boundary

Map 2

ASHLAND / I-5 CORRIDOR

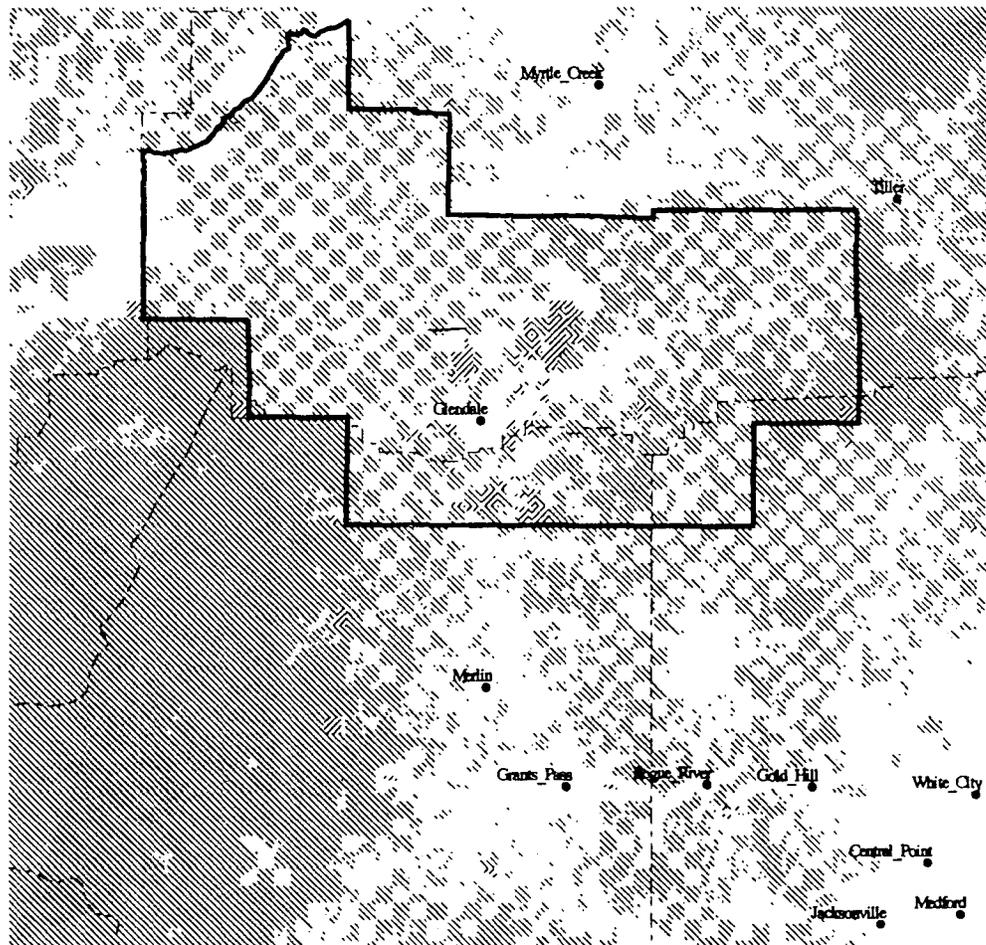
Special Emphasis Area



- | | |
|---------------|--------------------|
| Federal Lands | 4D Rule Boundary |
| State Lands | County Boundary |
| Tribal Lands | State Boundary |
| | Owl Range Boundary |

ROGUE RIVER / SOUTH UMPQUA CONNECTIVITY ZONE

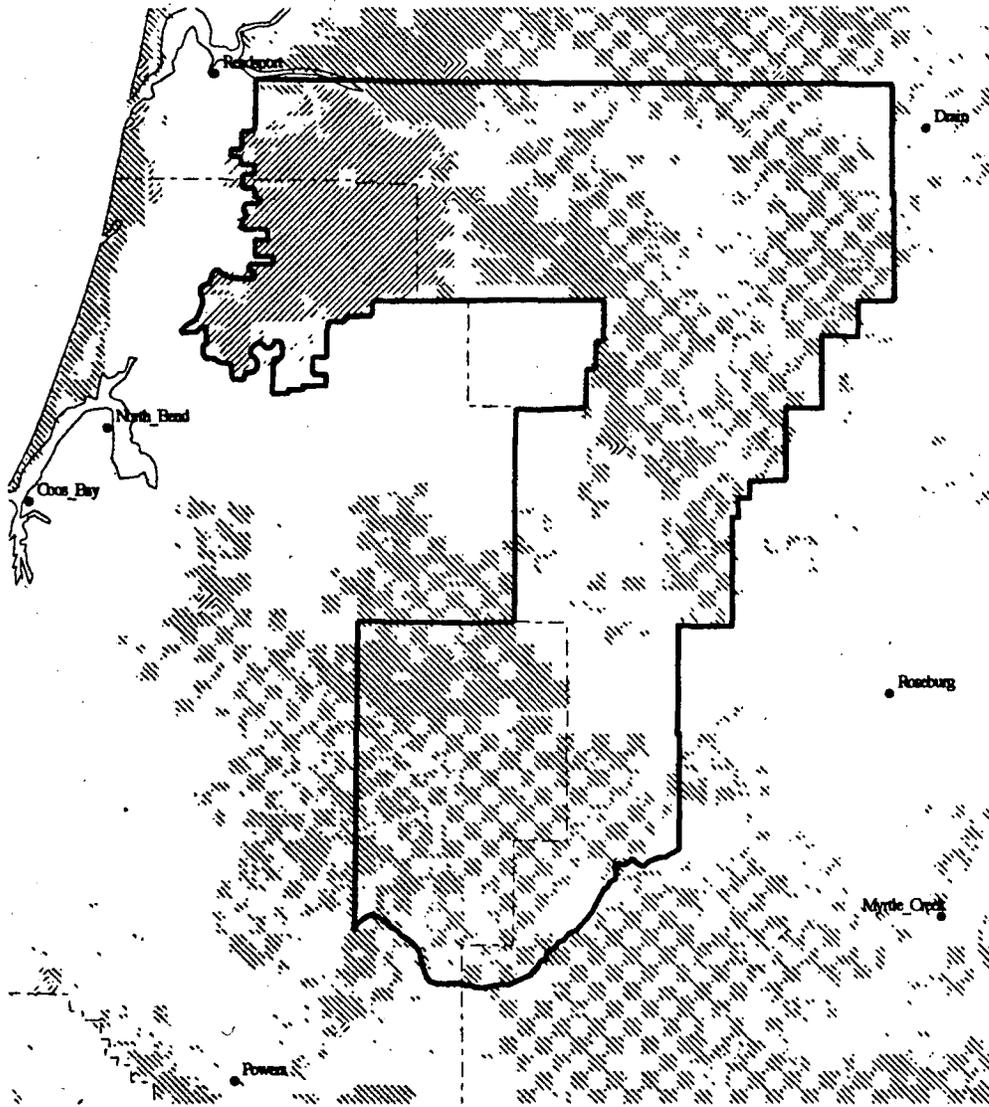
Special Emphasis Area



- ▨ Federal Lands
- ▩ State Lands
- ▤ Tribal Lands
- 4D Rule Boundary
- - - County Boundary
- · - State Boundary
- Owl Range Boundary

SOUTHERN OREGON COAST RANGE

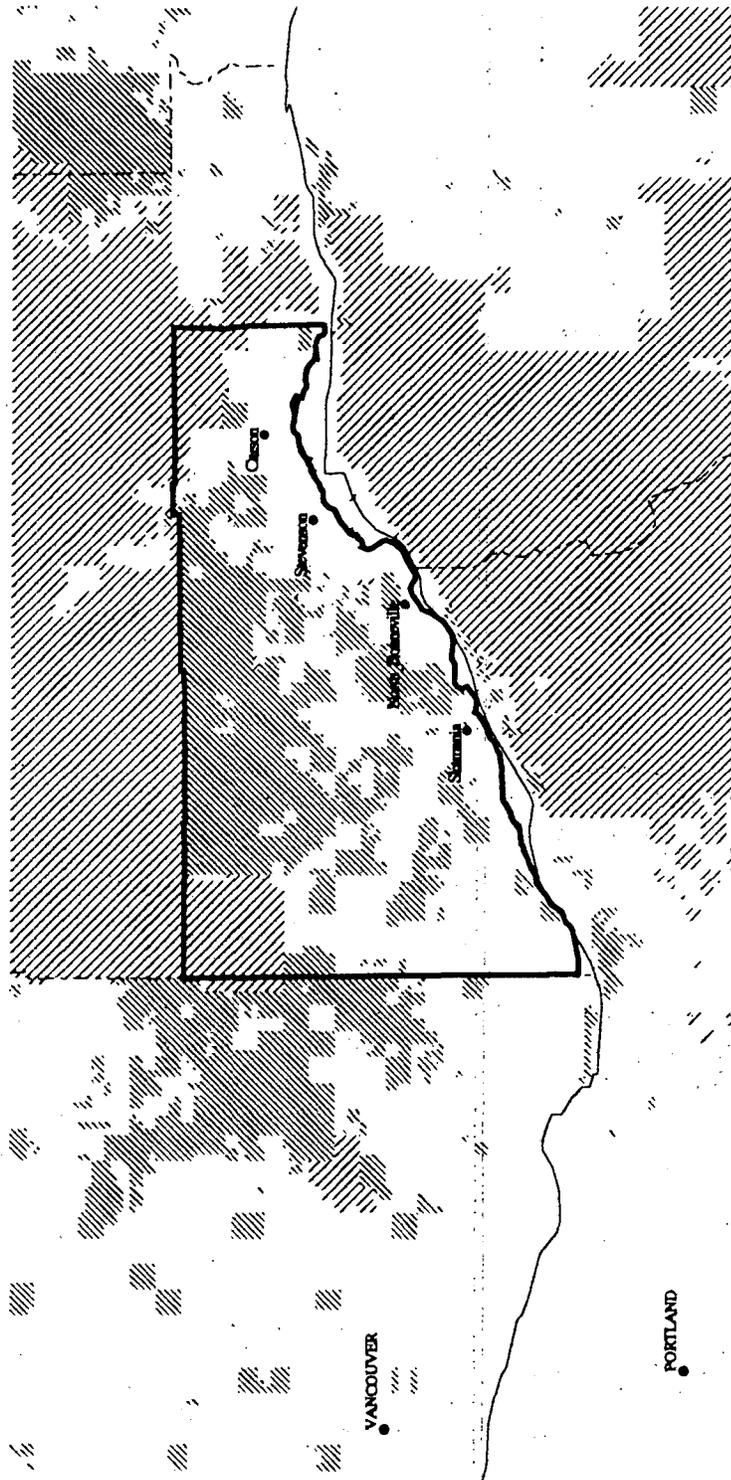
Special Emphasis Area



-  Federal Lands
-  State Lands
-  Tribal Lands
-  40 Rate Boundary
-  County Boundary
-  State Boundary
-  Coast Range Boundary

Map 7

COLUMBIA GORGE Special Emphasis Area



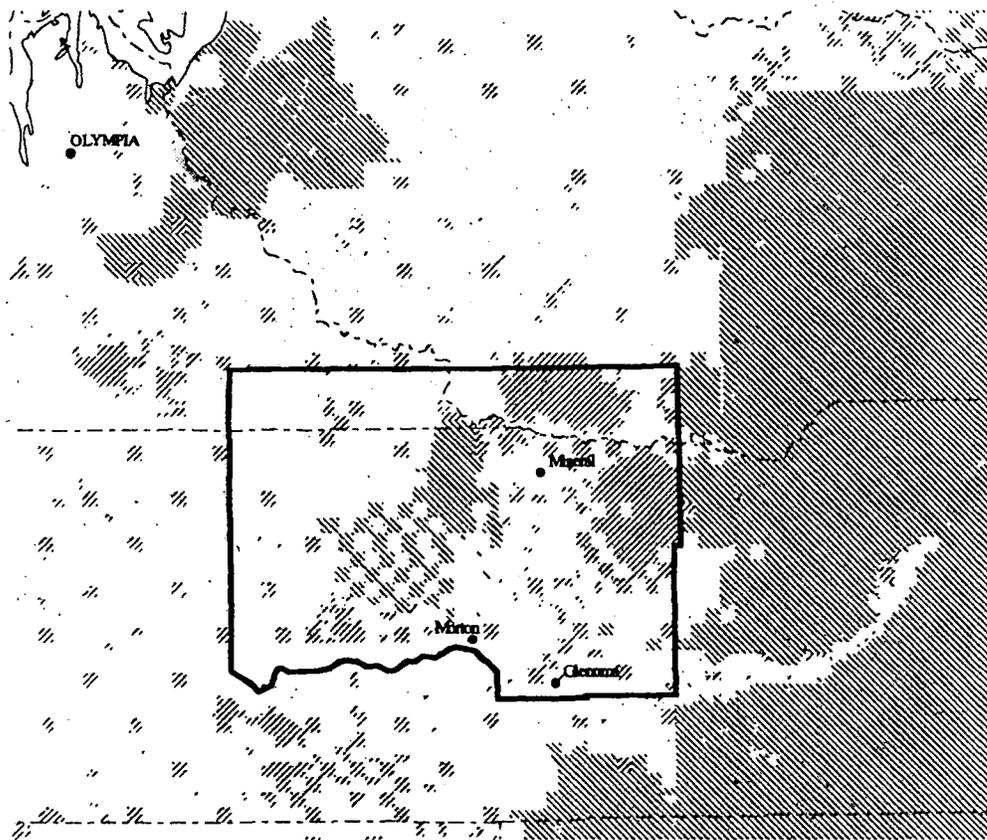
- Federal Lands
- State Lands
- Tribal Lands
- AD Rule Boundary
- County Boundary
- State Boundary
- Old Range Boundary

21 December 1993 1:395995

Map 8

MINERAL BLOCK

Special Emphasis Area

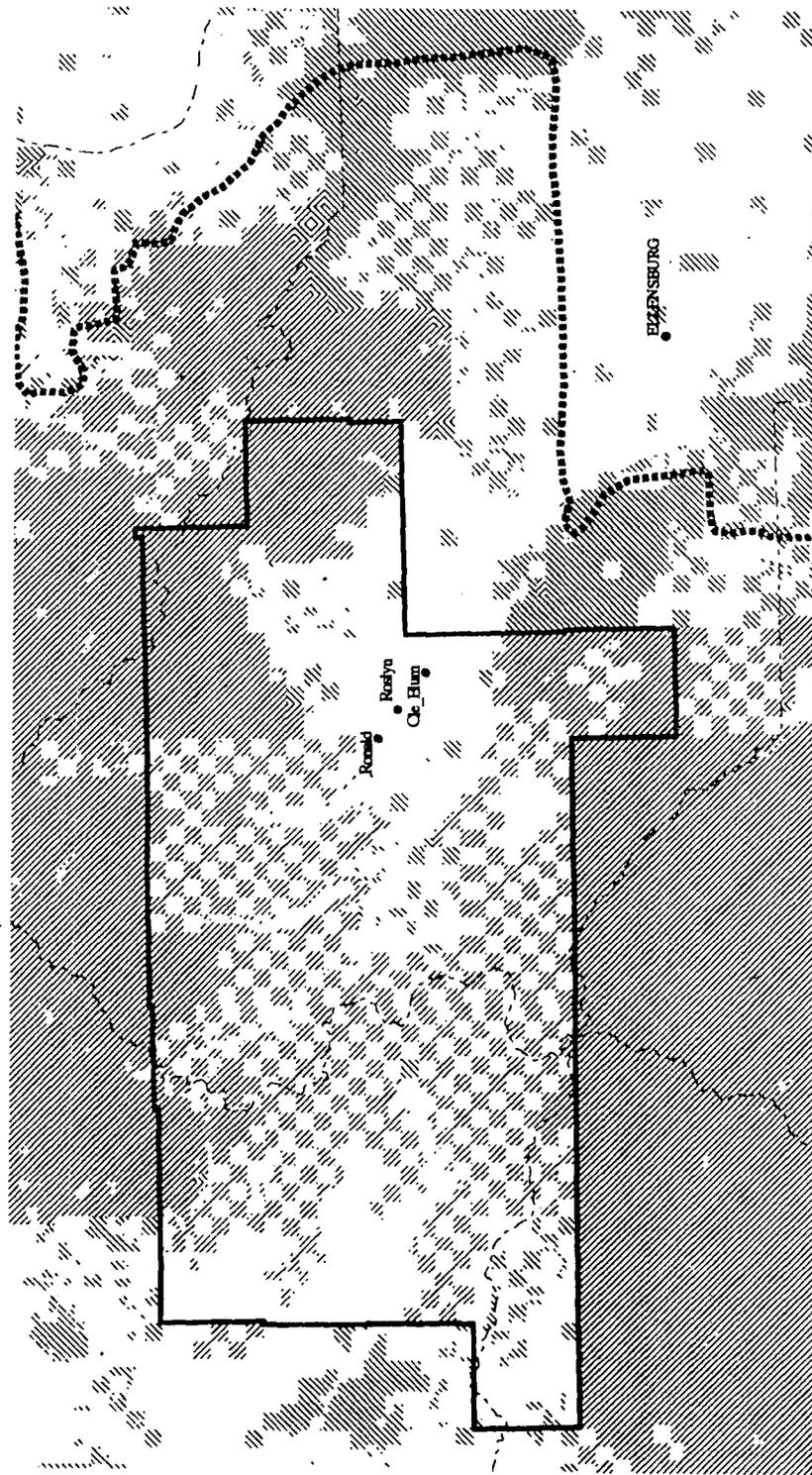


- | | |
|---------------|--------------------|
| Federal Lands | 40 Rule Boundary |
| State Lands | County Boundary |
| Tribal Lands | State Boundary |
| | Owl Range Boundary |

Map 9

I-90 CORRIDOR

Special Emphasis Area



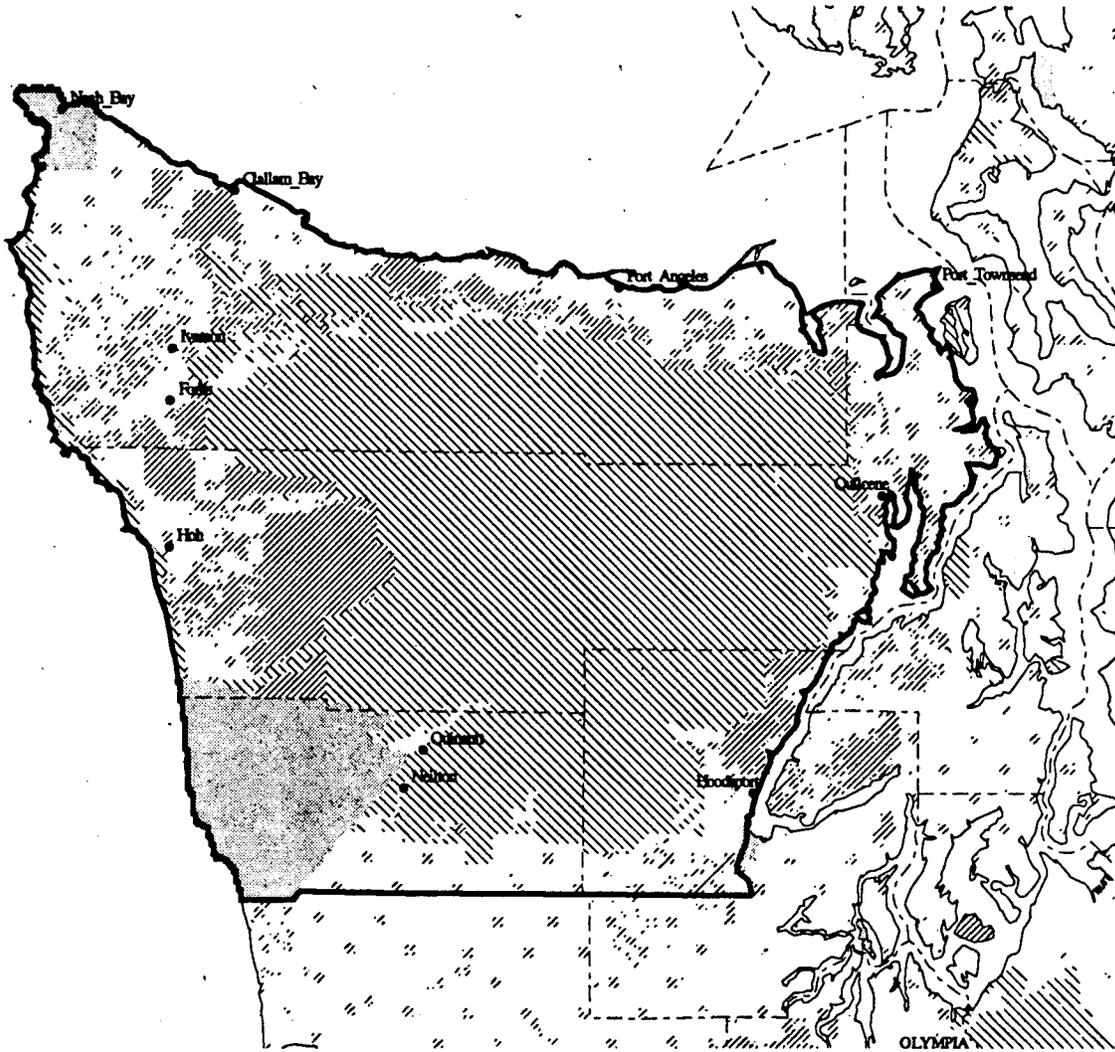
- Federal Lands
- State Lands
- Tribal Lands
- 40th Parallel Boundary
- County Boundary
- State Boundary
- Civil Range Boundary

22 December 1993 1:564558

Map 10

OLYMPIC PENINSULA

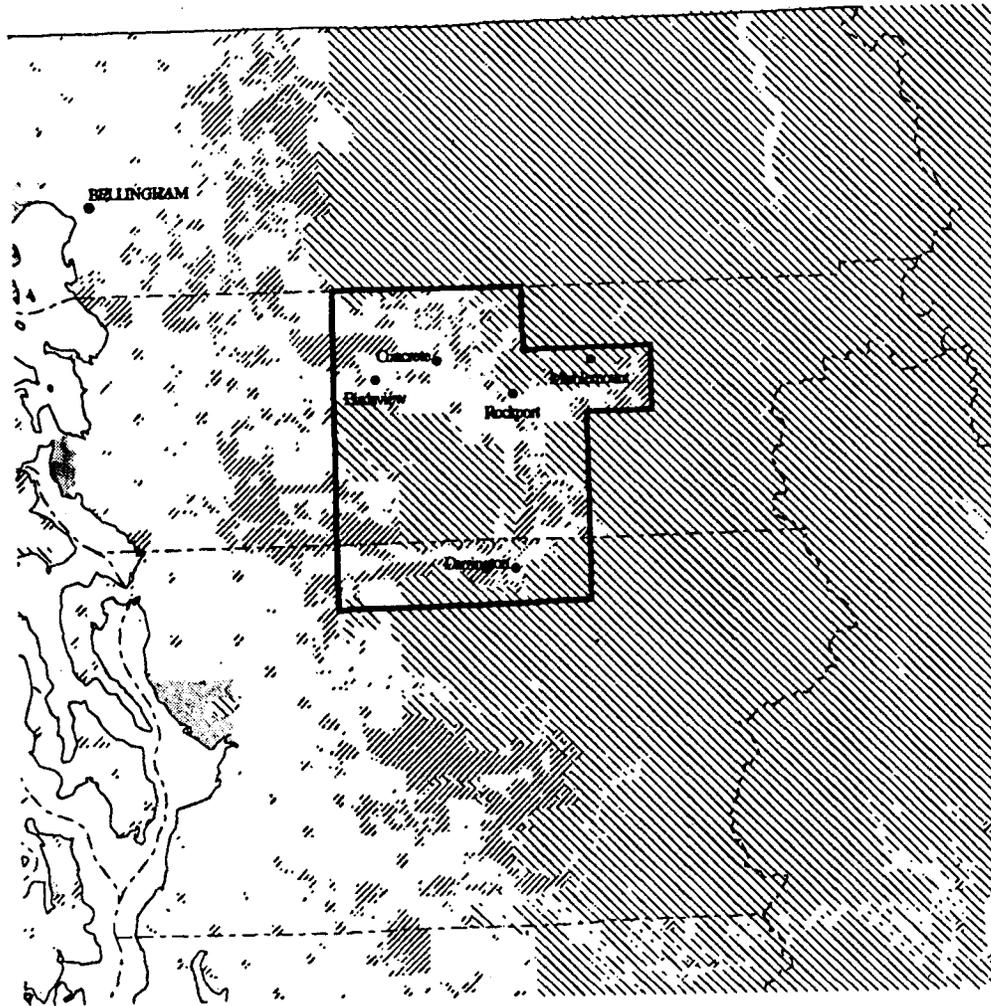
Special Emphasis Area



- | | |
|---------------|--------------------|
| Federal Lands | 4D Rule Boundary |
| State Lands | County Boundary |
| Tribal Lands | State Boundary |
| | Owl Range Boundary |

PHINNEY BLOCK

Special Emphasis Area



- | | |
|---|--|
|  Federal Lands |  4D Rule Boundary |
|  State Lands |  County Boundary |
|  Tribal Lands |  State Boundary |
| |  Owl Range Boundary |

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On non-Federal lands in these Special Emphasis Areas, timber harvests generally would not be prohibited if they retain at least 40 percent of a home range area of a northern spotted owl as suitable nesting, roosting, and foraging habitat and did not otherwise injure or kill an owl. The sizes of the home ranges to be used, by province, are: 14,271 acres for the Olympic Peninsula province; 6,657 acres for the Western and Eastern Washington Cascades provinces; 4,766 acres for the Oregon Coast Range province; 2,955 acres for Western and Eastern Oregon Cascades, and 3,340 acres for the Oregon Klamath province.

The take of northern spotted owls incidental to timber harvests on non-Federal lands in Oregon and Washington that are located outside of the Special Emphasis Areas would be prohibited if such harvests occurred within the 70 acres surrounding an active northern spotted owl nest. Thus, all existing habitat would have to be retained within 1,000 feet (70 acres) from an active northern spotted owl activity center, and any harvest within 0.25 miles would be subject to seasonal restrictions. Restrictions within the 70 acres would remain in place until surveys indicate that the sites are unoccupied (per Fish and Wildlife Service Owl Survey Protocol).

A different approach would be taken with regard to non-Federal lands in California. California laws that apply to timber harvests in suitable habitat for the northern spotted owl provide significant conservation benefits to the owl. In recognition of the conservation contributions of these laws and regulations, the FWS proposes to impose no separate Federal restrictions or prohibitions for timber harvests that are conducted in accordance with applicable California law.

Similarly, the FWS recognizes the owl conservation contributions of the timber harvest practices of various Indian Nations, such as the Yakima Indian Nation in Washington and the Warm Springs Indian Tribe in Oregon. The FWS also recognizes that other Indian forest lands managed by Indian Nations may provide marginal habitat for the northern spotted owl. In recognition of these circumstances, the Secretary's trust responsibility for Native Americans, and the development and proposal of an unprecedented Federal land based strategy for the conservation of the spotted owl, the FWS proposes generally to eliminate Federal prohibitions against the take of the northern spotted owl incidental to timber harvests on Indian forest lands (as that term is defined at 25 CFR 163.1)

in California, Oregon and Washington. Prohibitions under Tribal law would continue to apply.

Incidental Take of Northern Spotted Owls on Federal Lands

Timber harvest activities on Federal lands are subject to the section 7 consultation process of the ESA. Biological opinions under section 7 will deal with the issue of take on Federal lands.

Alternatives Considered

The FWS has identified three alternatives to the proposed action. Each alternative describes a different approach to prohibiting take of the northern spotted owl on Federal and non-Federal lands.

Alternative A (No Action): Retain All Current Prohibitions Against Taking

When the northern spotted owl was listed as a threatened species (on June 26, 1990 (55 FR 26114)), the FWS did not promulgate special regulations for the species under section 4(d) of the ESA. As a result, the prohibitions for endangered species, including prohibitions against take, became applicable to the northern spotted owl pursuant to 50 CFR 17.31. Under this alternative, existing prohibitions against any incidental taking of the northern spotted owl on Federal and non-Federal lands would remain in place and would not be reduced or relieved through the proposed special rule. An incidental take permit could be sought under existing FWS procedures.

For section 7 consultation on Federal actions, the FWS and Federal action agencies use information on the amount and condition of nesting, roosting, and foraging habitat within an area that approximates the home range of resident northern spotted owls in order to anticipate incidental take. Estimated home range areas for northern spotted owls vary by province and are based on local data collected from radio-telemetered spotted owls. Incidental take of northern spotted owls is anticipated when the amount of nesting, roosting, and foraging habitat drops to levels where studies indicate it is likely to affect the survival or reproductive capabilities of the individual spotted owls.

The risk of incidental take from activities on non-Federal lands is evaluated on a case-by-case basis. To evaluate the risk, the FWS examines, among other factors, the effect of the proposed action on habitat condition, habitat quantity, the degree of habitat fragmentation, and the history of known

resident spotted owls in the vicinity of the action.

Alternative B: Eliminate All Current Prohibitions Against Taking on All Non-Federal and Some Federal Lands

Under this alternative, the FWS would promulgate a special rule pursuant to section 4(d) under which all take of northern spotted owls incidental to timber harvest activities on non-Federal lands would be authorized under the ESA. The special rule would retain all other prohibitions against import, export, interstate and foreign commerce, and some forms of take (e.g., killing, wounding, hunting, trapping, capture, collection) for the northern spotted owl.

Under Alternative B, prohibitions against taking northern spotted owls incidental to timber harvests would remain for Federal lands contained in the Federal reserves, riparian reserves, and Adaptive Management Areas proposed under Alternative 9 of the Draft SELS.

Alternative C: Reduce Existing Prohibitions Against Incidental Taking on Non-Federal Lands Except in an Expanded List of Special Emphasis Areas

This alternative differs from the proposed action primarily in the number and location of Special Emphasis Areas in Oregon and Washington. This alternative would retain all existing prohibitions against taking northern spotted owls on Federal lands. This alternative would also retain prohibitions against incidental take on some Indian reservations. This alternative includes the following Special Emphasis Areas:

Oregon: The North Coast Range; parts of the Southern Oregon Coast Range; the South Willamette/North Umpqua area; the Rogue River/South Umpqua area of Oregon; the Ashland/I-5 area, south of Ashland, Oregon; the Santiam Pass area along the Oregon State Highway 20 east of Sweet Home; the Santiam River area east of Stayton; the McKenize River area along McKenize River east of Springfield; the Hood River area south of Hood River; and the Southeast Cascades area west of Klamath Falls.

Washington: The Olympic Peninsula; the Phinney Block; the I-90 corridor where it crosses the Cascade Mountains; the Mineral Block south of the I-90 corridor; the Columbia River Gorge; the Green River area near the Green River within Mount St. Helens National Monument; the Blewett Pass area in the vicinity of Swak Pass along State highway 97; the Southern Puget Sound East area extending east from Interstate

5 through Fort Lewis Military Reservation; the Yakima Indian Reservation area; the Siouxon Creek area along the upper reach of the Lewis River and Swift Creek Reservoir; the Sugarloaf Peak and Leavenworth Reserves area located north of the town of Leavenworth; the Edwards Peak area south of the Town of Leavenworth; the White Salmon area; the Entiat Ridge area; the Southwest Washington Lowlands Province; and the Bowman Mountain East area located east of the Town of Clipper.

On non-Federal lands in these Special Emphasis Areas, timber harvests would be subject to the same incidental take as are described in the proposed action noted previously.

Under this alternative, take of northern spotted owls incidental to timber harvest on non-Federal lands outside of Special Emphasis Areas would be subject to the same reduced restrictions as set forth in the proposed action for such areas.

Significant Issues To Be Addressed in the EIS

The environmental impact statement will discuss the environmental impacts of the proposed and alternate 4(d) rule formulations for the range of the northern spotted owl in California, Oregon, and Washington. The range of the northern spotted owl is the same as that defined in the Draft SEIS, and is the area generally bounded by the Canadian border, the Pacific Ocean, the eastern side of the Cascade Range, and Marin County, California.

A wide number of species are associated with the forests that provide habitat for the northern spotted owl. These species include, among others, such federally-listed species as the marbled murrelet, bald eagle, grizzly bear, and gray wolf, and a large number of additional species that are candidates for Federal listing as threatened or endangered. The EIS will assess the effects of the proposed section 4(d) rule on these species. This assessment will be approached by considering the effects of the proposed section 4(d) rule on the forest ecosystems associated with these species; this approach should help the EIS address concerns about conservation of biodiversity and the need to prevent future imperilment of species that are associated with the late-successional and old-growth forests of the Pacific northwest.

Similarly, a large number of human communities and individuals are dependent upon the forests that provide habitat for the northern spotted owl. The proposed EIS will also address concerns about the social and economic

effects of the proposed action and each of the alternatives to the section 4(d) rule for the northern spotted owl.

The FWS has identified the following significant environmental effects of the proposed section 4(d) rule for the northern spotted owl to be addressed in the EIS:

- Effects on the northern spotted owl, including its recovery.
- Effects on late-successional and old growth forests in the range of the northern spotted owl.
- Effects on other listed, proposed, and candidate species associated with late-successional and old growth forests in the range of the northern spotted owl.
- Effects on the conservation of stocks of salmonids (particularly anadromous stocks) within the range of the northern spotted owl.
- Effects on non-listed terrestrial wildlife and their habitats within the range of the northern spotted owl.
- Effects on aquatic species and their habitats within the range of the northern spotted owl.
- Effects on soil conservation in the range of the northern spotted owl.
- Effects on water and air quality in the range of the northern spotted owl.
- Effects on Native American peoples in the range of the northern spotted owl.
- Effects on cultural and historical resources in the range of the northern spotted owl.
- Effects on communities, large or small, that depend upon timber harvests in the range of the northern spotted owl.
- Effects on national, regional, State, and local economies.
- Effects on import and export markets.
- Cumulative effects of the proposed action, with other actions, within the range of the northern spotted owl.

Background

The Northern Spotted Owl

The FWS published a proposal to list the northern spotted owl as a threatened species on June 23, 1989 (54 FR 26666). On June 26, 1990 (55 FR 26114), the FWS listed the northern spotted owl as a threatened species. The northern spotted owl was listed as a threatened species primarily because of the loss and adverse modification of suitable habitat throughout its range. In the early to mid-1800s western Washington and Oregon were covered by an estimated 24 to 28 million acres of forest of which 70 percent may have been old growth (Spies and Franklin 1991). Historical estimates of forested habitat in northern California are 1.3 to 3.2 million acres of old-growth Douglas-fir or mixed conifer forests and about 2.2 million acres of old growth coastal redwood forests.

Over the past 190 years, these forests and suitable habitat for the northern spotted owl are estimated to have declined by as much as 88 percent (Spies and Franklin 1991, Thomas *et al.* 1990). When habitat fragmentation, reduction in individual stand size, and edge effects are considered, the amount of nesting, roosting, and foraging habitat remaining may be less than 50 percent of the remaining old growth forest. This reduction in habitat is primarily attributable to timber harvesting and land conversion practices although natural perturbations, such as forest fires, have caused habitat loss as well. Approximately 90 percent of suitable habitat for northern spotted owls now occurs on public land (Thomas *et al.* 1990).

The inadequacy of existing regulatory mechanisms under State and Federal laws and regulations also contributed to the decision to list the northern spotted owl as a threatened species. Even today, the degree of protection accorded the northern spotted owl varies under State laws. The northern spotted owl is listed under Washington law as an endangered species, under Oregon law as threatened, and under California law as a sensitive species.

Overutilization and disease were lesser factors in the decision to list the spotted owl as threatened species under the ESA. However, predation by great horned owls (*Bufo virginianus*) was cited as a major source of mortality in northern spotted owls (Dawson *et al.* 1986, Simberloff 1987). The effects of great horned owls on the northern spotted owl were at least partially related to forest fragmentation: northern spotted owls are exposed to greater predation by great horned owls as they move across open terrain or within forests edges where great horned owls are more numerous.

Critical Habitat for the Northern Spotted Owl

The FWS published a proposed critical habitat designation for the northern spotted owl on May 6, 1991 (56 FR 20816). On August 31, 1991 (56 FR 40001), the FWS published a revised critical habitat proposal which superseded the previous proposal. On January 15, 1992 (57 FR 1796), the FWS designated critical habitat for the northern spotted owl encompassing 6.9 million acres of Federal land in the States of California, Oregon, and Washington. Non-Federal lands were not included in the designation. Identification of critical habitat into discrete units were based, with some modifications, on the conceptual framework in the Interagency Scientific

Committee's report (Thomas *et al.* 1990).

Lands were included in the critical habitat designation when management considerations to benefit the northern spotted owl needed to be given highest priority. The critical habitat designation concentrated on the quantity and quality of habitat that was believed to be suitable for the nesting, roosting, and foraging needs of the northern spotted owl, particularly when that habitat occurred in large, contiguous blocks of land. The areas that were designated critical habitat were also selected to minimize dispersal distances between adjacent units of suitable habitat.

The Proposed Forest Ecosystem Management Plan

After the April 2, 1993, Forest Conference in Portland, Oregon, the President established a Forest Ecosystem Management Assessment Team (FEMAT) to develop options for management of forest ecosystems on Federal lands in California, Oregon, and Washington. FEMAT developed ten management options which are outlined in the Team's report, *Forest Ecosystem Management: An Ecological, Economic, and Social Assessment*.

On July 1, 1993, the President identified Alternative 9 as his preferred alternative for resource management on Federal lands. A final decision has yet to be made. This awaits completion of the NEPA process. The management strategy proposed under Alternative 9 is based on a system of Congressional reserves, administratively withdrawn areas and late-successional reserves, riparian reserves, Adaptive Management Areas, and a matrix of other Federal lands.

Alternative 9 would change the management prescriptions for Federal forest lands within the range of the northern spotted owl. In most instances, Federal management prescriptions associated with Alternative 9 are much more strict than current land management prescriptions that protect the owl; in other instances, Federal management prescriptions associated with Alternative 9 are less strict than current prohibitions.

The SEIS

The Bureau of Land Management, the Forest Service, the Fish and Wildlife Service, the Environmental Protection Agency, and the National Marine Fisheries Service prepared a Draft Supplemental Environmental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (Draft

SEIS) to present the options in the FEMAT report to the public. Each option is presented as an alternative in the Draft SEIS, with disclosure of the environmental consequences of each alternative. The Final SEIS is currently being prepared and will be available in March 1994. The Fish and Wildlife Service intends to closely coordinate the preparation of the draft EIS for the section 4(d) rule with the review of public comments received on the Draft SEIS for FEMAT. To the extent the strategy for Federal lands ultimately adopted differs from the preferred alternative, such differences will be addressed in the EIS on the section 4(d) rule.

Overview of Alternative 9

In its current form, Alternative 9 proposes a network of Federal reserves totalling over 18 million acres of Federal lands in California, Oregon, and Washington. That total includes 7.1 million acres of late-successional reserves, 2.2 million acres of riparian reserves, 7.0 million acres of Congressional reserves, and 1.7 million acres of administratively withdrawn areas.

The Federal reserves proposed with Alternative 9 would provide 5.6 million acres of suitable nesting, roosting, and foraging habitat for the northern spotted owl. The Congressional reserve provide 1.6 million acres, the administratively withdrawn areas provide 0.4 million acres, the late-successional reserves provide 3.0 million acres, and the riparian reserves provide 0.6 million acres. Seventy-three percent of the 7.6 million Federal acres of nesting, roosting, and foraging habitat for the northern spotted owl is in reserve.

Additionally, the Federal reserves proposed with Alternative 9 would provide 2.1 million acres of marbled murrelet nesting habitat. The Congressional reserves provide 0.7 million acres, the administratively withdrawn areas provide 0.1 million acres, the late-successional reserves provide 1.1 million acres, and the riparian reserves provide 0.2 million acres. Eighty-one percent of the 2.6 million Federal acres of nesting habitat for the marbled murrelet is in reserve.

Timber harvests would not be allowed in reserves under Alternative 9, except for some thinning or salvage of timber in the late-successional reserves if it would be beneficial to the maintenance or creation of late-successional forest conditions.

Timber harvests would not be allowed in riparian reserves under Alternative 9, and agencies would be required to minimize the effects of other resource

activities in these reserves. These riparian reserves would eventually provide a considerable amount of late-successional forest because they represent approximately 31 percent of the lands in the matrix. Based on current information, approximately 28 percent of the riparian reserves currently provide suitable nesting, roosting, and foraging habitat for spotted owls, and 54 percent of the riparian reserves provide suitable dispersal habitat for spotted owls.

Alternative 9 also proposes placing an additional 1.5 million acres of Federal land in ten special "Adaptive Management Areas." Management activities in these Adaptive Management Areas would emphasize innovative forestry techniques with the goals of speeding attainment of late-successional characteristics and on restoring watersheds. Nesting, roosting, and foraging habitat for the northern spotted owl represents approximately 0.4 million acres of the lands that are proposed for Adaptive Management Areas.

In summary, Alternative 9, as currently proposed, would provide conditions on Federal lands that would contribute significantly to the conservation needs of the northern spotted owl. In areas where the Federal contribution is limited by lack of Federal forest lands, non-Federal forest lands continue to play an important role in the conservation of the species.

The Relationship of the Section 4(d) EIS to the SEIS

The respective proposed actions subject to analysis in the Draft SEIS for Federal lands and EIS for the 4(d) rule are different. The scope of the Draft SEIS is direction concerning old-growth forest management activities on Federal lands within the range of the northern spotted owl. Specifically, the Draft SEIS identifies and analyzes ten alternative strategies for amending management of old-growth forest lands administered by the Bureau of Land Management (BLM) and the Forest Service within the range of the northern spotted owl. The anticipated scope of the 4(d) EIS is direction concerning removal or revision of the incidental take prohibitions currently in place for the northern spotted owl. The alternatives for the 4(d) EIS are set forth above.

Notwithstanding the different proposed actions that are the bases of their preparation, the EIS' both will address, among other things, effects on the northern spotted owl and/or its habitat. Consequently, the EIS' likely will rely upon the same or similar information and overlap to a certain

degree. To avoid unnecessary repetition and proliferation of paper, the EIS on the 4(d) rule may incorporate by reference some of the analysis contained in the Federal lands SEIS. Nevertheless, both EIS' will reflect consideration of cumulative effects consistent with NEPA regulations on the basis of the best information available at the time of their respective preparation.

Section 4(d) of the Endangered Species Act

Section 9 of the ESA prohibits "take" of endangered species. "Take" is defined in section 3(18) of the ESA to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." "Harass" in the definition of "take" in the ESA means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). "Harm" in the definition of "take" has been interpreted in regulation to mean an action that actually kills or injures wildlife. Such an action may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

The ESA automatically provides endangered species with all of the protections against take. However, the FWS has more flexibility to manage threatened species. Section 4(d) and its implementing regulation (50 CFR 17.31) give the FWS authority to issue regulations that provide threatened species with some, all, or different prohibitions than those provided in section 9 of the ESA. Section 4(d) provides:

Whenever any species is listed as a threatened species * * *, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1) * * * with respect to endangered species.

Under 50 CFR 17.31, the prohibitions applicable to endangered species under section 9(a) automatically apply to each threatened species unless the FWS publishes a "special" regulation under section 4(d) of the ESA establishing a different set of prohibitions for the species. Congress intended section 4(d) to provide the Secretary with broad

flexibility to tailor protective regulations for a threatened species to suit the particular needs of the species:

"Once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of the species, or he may choose to forbid both taking and importation but allow the transportation of such species." (H.R. Rep. No. 412, 93d Cong. 1st Sess. 12 (1973)).

A section 4(d) rule can be used to secure the protection of a species, while providing needed regulatory flexibility to minimize unnecessary or inappropriate restrictions on otherwise lawful activity. However, that flexibility is not unlimited. The FWS has interpreted the ESA as requiring that section 4(d) regulations advance the conservation of the species, provide a net benefit to the species, and not preclude the recovery of the species.

Previous Section 4(d) Rules

The FWS has issued section 4(d) rules for several threatened species. For example, the FWS permitted a Federal program to control the amount of livestock lost to the threatened population of the gray wolf (*Canis lupus*) in Minnesota. The FWS justified the section 4(d) rule for the wolf because it would lessen public hostility toward the wolf, which would improve the chances of protecting the wolf in the long term (see 50 CFR 17.40(d)).

The FWS issued a section 4(d) rule that allows limited take of the Louisiana black bear (*Ursus americanus*) incidental to normal forest practices on private land and in accordance with a management plan. In this case, removal of mature trees can result in newly opened clearings that help to create food and shelter for the bear, such as meadows, berry patches and young trees (see 50 CFR 17.40(i); 57 FR 588, 593).

More recently, on December 10, 1993 (58 FR 16758), the FWS proposed a section 4(d) rule that would authorize limited take of the threatened coastal California gnatcatcher (*Poliopitila californica californica*) incidental to specific activities undertaken in its habitat. To be exempt from the take releases the remainder to other land uses.

To identify a proposed action for a section 4(d) rule for the northern spotted owl, the FWS has considered the benefits that the unprecedented Federal land management scheme recommended by Alternative 9 of the Draft SEIS would provide to the northern spotted owl. The FWS also

considered the contribution of other mechanisms to protect the northern spotted owl. Examples of these mechanisms include the critical habitat that has been designated for the northern spotted owl, and Federal, State, and the possibility of private landowner habitat management plans designed to protect and conserve federally listed species within the range of the northern spotted owl.

As with the coastal California gnatcatcher, the FWS has given particular attention to State protective land management plans that affect large portions of the range of the owl. As with the Louisiana black bear, the FWS has also taken into account private landowner management plans that have been developed or are likely to be developed and are protective of the northern spotted owl.

Public Comments Solicited

The FWS solicits public comments on the scope of the issues to be addressed in the EIS for a section 4(d) rule for the northern spotted owl. In particular, the FWS seeks specific comments on:

(1) Biological, commercial, trade, or other relevant data on the distribution and abundance of the northern spotted owl on non-Federal lands in California, Oregon, and Washington;

(2) Biological, commercial, trade, or other relevant data on the distribution and abundance of the northern spotted owl that identifies the effects of the alternatives for a section 4(d) rule on northern spotted owl;

(3) The scope of the issues that have been identified for the environmental impact statement on a proposed special rule;

(4) The range of alternatives that have been identified for the environmental impact statement on a proposed special rule;

(5) The FWS is considering including provisions in a section 4(d) rule which would provide further guidance on avoiding the incidental take of the marbled murrelet (*Brachyramphus marmoratus marmoratus*), which is listed as a threatened species. A special rule that included both the spotted owl and the marbled murrelet would allow the FWS to address two species that are associated with similar forest ecosystems at the same time. The FWS seeks particular input and public comment on how suitable habitat for the marbled murrelet should be identified and how should it be protected, and data on the distribution and abundance of the marbled murrelet on non-Federal land in California, Oregon, and Washington;

(6) The FWS is considering several optional management provisions for non-Federal landowners in Special Emphasis Areas. One would allow them to propose refinements in prohibitions against take of northern spotted owls incidental to timber harvests based on site-specific information. This "local option" would allow individuals to propose adjustment to prohibitions against take of northern spotted owls without going through the normal habitat conservation planning process. If a "local option" is included in a proposed section 4(d) rule for the northern spotted owl, the FWS is likely to propose specific acreage limits and procedural requirements. An additional optional management provision would allow non-Federal landowners in Special Emphasis Areas to adopt the matrix management standards and guidelines applicable to Federal lands in the Special Emphasis Area. The FWS seeks public comment on these options;

(7) The FWS is also considering the implications of a special rule on small, fully independent, private forest land ownerships. There may be situations where it would be warranted to exempt small (e.g., ten acres or smaller) plots of non-commercial forest land from the prohibitions of this proposed rule to avoid undue economic hardship. The FWS solicits comments on this proposal both as to its feasibility and its environmental effects;

(8) The FWS seeks public comment on the boundaries of the Special Emphasis Areas in the proposed action, including impacts and effects of alternative boundaries, if suggested;

(9) The FWS seeks public comment on possible mitigation measures, such as multi-species Habitat Conservation Plans (HCPs) or conservation agreements that provide long-term, enforceable, and protective land management prescriptions for non-Federal lands; and

(10) The FWS seeks public comment on whether to retain Federal incidental take restrictions for Indian forest lands included within the boundary of a Special Emphasis Area.

The environmental review for this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), NEPA regulations (40 CFR Part 1500-1508), other applicable Federal regulations, and FWS procedures for compliance with those regulations.

The FWS will distribute a flyer summarizing this notice of intent to individuals receiving and commenting on the Draft Supplemental Environmental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl. This flyer will contain a comment sheet to facilitate public comments.

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- Dated: December 17, 1993.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 93-31866 Filed 12-28-93; 8:45 am]

BILLING CODE 4310-55-M

Wednesday
December 29, 1993

Executive Order

Part IX

The President

Executive Order 12888—Amendments to
the Manual for Courts-Martial, United
States, 1984

Presidential Documents

Title 3—**Executive Order 12888 of December 23, 1993****The President****Amendments to the Manual for Courts-Martial,
United States, 1984**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801-946), in order to prescribe amendments to the Manual for Courts-Martial, United States, 1984, prescribed by Executive Order No. 12473; as amended by Executive Order No. 12484, Executive Order No. 12550, Executive Order No. 12586, Executive Order No. 12708, and Executive Order No. 12767, it is hereby ordered as follows:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. R.C.M. 109 is amended to read as follows:

“(a) *In general.* Each Judge Advocate General is responsible for the professional supervision and discipline of military trial and appellate military judges, judge advocates, and other lawyers who practice in proceedings governed by the code and this Manual. To discharge this responsibility each Judge Advocate General may prescribe rules of professional conduct not inconsistent with this rule or this Manual. Rules of professional conduct promulgated pursuant to this rule may include sanctions for violations of such rules. Sanctions may include but are not limited to indefinite suspension from practice in courts-martial and in the Courts of Military Review. Such suspensions may only be imposed by the Judge Advocate General of the armed service of such courts. Prior to imposing any discipline under this rule, the subject of the proposed action must be provided notice and an opportunity to be heard. The Judge Advocate General concerned may upon good cause shown modify or revoke suspension. Procedures to investigate complaints against military trial judges and appellate military judges are contained in subsection (c) of this rule.

(b) *Action after suspension or disbarment.* When a Judge Advocate General suspends a person from practice or the Court of Military Appeals disbars a person, any Judge Advocate General may suspend that person from practice upon written notice and opportunity to be heard in writing.

(c) *Investigation of judges.*

(1) *In general.* These rules and procedures promulgated pursuant to Article 6a are established to investigate and dispose of charges, allegations, or information pertaining to the fitness of a military trial judge or appellate military judge to perform the duties of the judge's office.

(2) *Policy.* Allegations of judicial misconduct or unfitness shall be investigated pursuant to the procedures of this rule and appropriate action shall be taken. Judicial misconduct includes any act or omission that may serve to demonstrate unfitness for further duty as a judge, including but not limited to violations of applicable ethical standards.

(3) *Complaints.* Complaints concerning a military trial judge or appellate military judge will be forwarded to the Judge Advocate General of the service concerned or to a person designated by the Judge Advocate General concerned to receive such complaints.

(4) *Initial action upon receipt of a complaint.* Upon receipt, a complaint will be screened by the Judge Advocate General concerned or by the individual designated in subsection (c)(3) of this rule to receive complaints. An initial inquiry is necessary if the complaint, taken as true, would constitute judicial misconduct or unfitness for further service as a judge. Prior to the commencement of an initial inquiry, the Judge Advocate General concerned shall be notified that a complaint has been filed and that an initial inquiry will be conducted. The Judge Advocate General concerned may temporarily suspend the subject of a complaint from performing judicial duties pending the outcome of any inquiry or investigation conducted pursuant to this rule. Such inquiries or investigations shall be conducted with reasonable promptness.

(5) *Initial inquiry.*

(A) *In general.* An initial inquiry is necessary to determine if the complaint is substantiated. A complaint is substantiated upon finding that it is more likely than not that the subject judge has engaged in judicial misconduct or is otherwise unfit for further service as a judge.

(B) *Responsibility to conduct initial inquiry.* The Judge Advocate General concerned, or the person designated to receive complaints under subsection (c)(3) of this rule, will conduct or order an initial inquiry. The individual designated to conduct the inquiry should, if practicable, be senior to the subject of the complaint. If the subject of the complaint is a military trial judge, the individual designated to conduct the initial inquiry should, if practicable, be a military trial judge or an individual with experience as a military trial judge. If the subject of the complaint is an appellate military judge, the individual designated to conduct the inquiry should, if practicable, have experience as an appellate military judge.

(C) *Due process.* During the initial inquiry, the subject of the complaint will, at a minimum, be given notice and an opportunity to be heard.

(D) *Action following the initial inquiry.* If the complaint is not substantiated pursuant to subsection (c)(5)(A) of this rule, the complaint shall be dismissed as unfounded. If the complaint is substantiated, minor professional disciplinary action may be taken or the complaint may be forwarded, with findings and recommendations, to the Judge Advocate General concerned. Minor professional disciplinary action is defined as counselling or the issuance of an oral or written admonition or reprimand. The Judge Advocate General concerned will be notified prior to taking minor professional disciplinary action or dismissing a complaint as unfounded.

(6) *Action by the Judge Advocate General.*

(A) *In general.* The Judge Advocates General are responsible for the professional supervision and discipline of military trial and appellate military judges under their jurisdiction. Upon receipt of findings and recommendations required by subsection (c)(5)(D) of this rule the Judge Advocate General concerned will take appropriate action.

(B) *Appropriate Actions.* The Judge Advocate General concerned may dismiss the complaint, order an additional inquiry, appoint an ethics commission to consider the complaint, refer the matter to another appropriate investigative agency or take appropriate professional disciplinary action pursuant to the rules of professional conduct prescribed by the Judge Advocate General under subsection (a) of this rule. Any decision of a Judge Advocate General, under this rule, is final and is not subject to appeal.

(C) *Standard of Proof.* Prior to taking professional disciplinary action, other than minor disciplinary action as defined in subsection (c)(5)(D) of this rule, the Judge Advocate General concerned shall find, in writing, that the subject of the complaint engaged in judicial misconduct or is otherwise unfit for continued service as a military judge, and that such misconduct or unfitness is established by clear and convincing evidence.

(D) *Due process.* Prior to taking final action on the complaint, the Judge Advocate General concerned will ensure that the subject of the complaint is, at a minimum, given notice and an opportunity to be heard.

(7) *The Ethics Commission.*

(A) *Membership.* If appointed pursuant to subsection (c)(6)(B) of this rule, an ethics commission shall consist of at least three members. If the subject of the complaint is a military trial judge, the commission should include one or more military trial judges or individuals with experience as a military trial judge. If the subject of the complaint is an appellate military judge, the commission should include one or more individuals with experience as an appellate military judge. Members of the commission should, if practicable, be senior to the subject of the complaint.

(B) *Duties.* The commission will perform those duties assigned by the Judge Advocate General concerned. Normally, the commission will provide an opinion as to whether the subject's acts or omissions constitute judicial misconduct or unfitness. If the commission determines that the affected judge engaged in judicial misconduct or is unfit for continued judicial service, the commission may be required to recommend an appropriate disposition to the Judge Advocate General concerned.

(8) *Rules of procedure.* The Secretary of Defense or the Secretary of the service concerned may establish additional procedures consistent with this rule and Article 6a."

b. R.C.M. 305(f) is amended to read as follows:

"Military Counsel. If requested by the prisoner and such request is made known to military authorities, military counsel shall be provided to the prisoner before the initial review under subsection (i) of this rule or within 72 hours of such a request being first communicated to military authorities, whichever occurs first. Counsel may be assigned for the limited purpose of representing the accused only during the pretrial confinement proceedings before charges are referred. If assignment is made for this limited purpose, the prisoner shall be so informed. Unless otherwise provided by regulations of the Secretary concerned, a prisoner does not have a right under this rule to have military counsel of the prisoner's own selection."

c. R.C.M. 305(h)(2)(A) is amended to read as follows:

"(A) Decision. Not later than 72 hours after the commander's ordering of a prisoner into pretrial confinement, or after receipt of a report that a member of the commander's unit or organization has been confined, whichever situation is applicable, the commander shall decide whether pretrial confinement will continue."

d. R.C.M. 305(i)(1) is amended to read as follows:

"(1) In general. A review of the adequacy of probable cause to believe the prisoner has committed an offense and of the necessity for continued pretrial confinement shall be made within 7 days of the imposition of confinement under military control. If the prisoner was apprehended by civilian authorities and remains in civilian custody at the request of military authorities, reasonable efforts will be made to bring the prisoner under military control in a timely fashion. In calculating the number of days of confinement for purposes of this rule, the initial date of confinement shall count as one day and the date of the review shall also count as one day."

e. R.C.M. 405(i) is amended to read as follows:

"(i) Military Rules of Evidence. The Military Rules of Evidence—other than Mil. R. Evid. 301, 302, 303, 305, 412, and Section V—shall not apply in pretrial investigations under this rule."

f. R.C.M. 701(g)(3)(C) is amended to read as follows:

“(C) Prohibit the party from introducing evidence, calling a witness, or raising a defense not disclosed; and”.

g. R.C.M. 704(e) is amended to read as follows:

“(e) *Decision to grant immunity.* Unless limited by superior competent authority, the decision to grant immunity is a matter within the sole discretion of the appropriate general court-martial convening authority. However, if a defense request to immunize a witness has been denied, the military judge may, upon motion of the defense, grant appropriate relief directing that either an appropriate general court-martial convening authority grant testimonial immunity to a defense witness or, as to the affected charges and specifications, the proceedings against the accused be abated, upon findings that:

(1) The witness intends to invoke the right against self-incrimination to the extent permitted by law if called to testify; and

(2) The Government has engaged in discriminatory use of immunity to obtain a tactical advantage, or the Government, through its own overreaching, has forced the witness to invoke the privilege against self-incrimination; and

(3) The witness' testimony is material, clearly exculpatory, not cumulative, not obtainable from any other source and does more than merely affect the credibility of other witnesses.”.

h. R.C.M. 910(a)(1) is amended to read as follows:

“(1) *In general.* An accused may plead as follows: guilty; not guilty to an offense as charged, but guilty of a named lesser included offense; guilty with exceptions, with or without substitutions, not guilty of the exceptions, but guilty of the substitutions, if any; or, not guilty. A plea of guilty may not be received as to an offense for which the death penalty may be adjudged by the court-martial.”.

i. R.C.M. 918(a)(1) is amended to read as follows:

“(1) *As to a specification.* General findings as to a specification may be: guilty; not guilty of an offense as charged, but guilty of a named lesser included offense; guilty with exceptions, with or without substitutions, not guilty of the exceptions, but guilty of the substitutions, if any; not guilty only by reason of lack of mental responsibility; or, not guilty. Exceptions and substitutions may not be used to substantially change the nature of the offense or to increase the seriousness of the offense or the maximum punishment for it.”.

j. R.C.M. 920(b) is amended to read as follows:

“(b) *When given.* Instructions on findings shall be given before or after arguments by counsel, or at both times, and before the members close to deliberate on findings, but the military judge may, upon request of the members, any party, or sua sponte, give additional instructions at a later time.”.

k. R.C.M. 1103(g)(1)(A) is amended to read as follows:

“*In general.* In general and special courts-martial which require a verbatim transcript under subsections (b) or (c) of this rule and are subject to review by a Court of Military Review under Article 66, the trial counsel shall cause to be prepared an original and four copies of the record of trial. In all other general and special courts-martial the trial counsel shall cause to be prepared an original and one copy of the record of trial.”.

Sec. 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Mil. R. Evid. 311(e)(2) is amended to read as follows:

“(2) *Derivative Evidence.* Evidence that is challenged under this rule as derivative evidence may be admitted against the accused if the military

judge finds by a preponderance of the evidence that the evidence was not obtained as a result of an unlawful search or seizure, that the evidence ultimately would have been obtained by lawful means even if the unlawful search or seizure had not been made, or that the evidence was obtained by officials who reasonably and with good faith relied on the issuance of an authorization to search, seize, or apprehend or a search warrant or an arrest warrant. Notwithstanding other provisions of this Rule, an apprehension made in a dwelling in a manner that violates R.C.M. 302(d)(2)&(e) does not preclude the admission into evidence of a statement of an individual apprehended provided (1) that the apprehension was based on probable cause, (2) that the statement was made subsequent to the apprehension at a location outside the dwelling, and (3) that the statement was otherwise in compliance with these rules.”

b. Mil. R. Evid. 505(a) is amended to read as follows:

“(a) *General rule of privilege.* Classified information is privileged from disclosure if disclosure would be detrimental to the national security. As with other rules of privilege this rule applies to all stages of the proceedings.”

c. Mil. R. Evid. 505(g)(1)(D) is amended by adding the following at the end:

“All persons requiring security clearances shall cooperate with investigatory personnel in any investigations which are necessary to obtain a security clearance.”

d. Mil. R. Evid. 505(h)(3) is amended to read as follows:

“(3) *Content of notice.* The notice required by this subdivision shall include a brief description of the classified information. The description, to be sufficient, must be more than a mere general statement of the areas about which evidence may be introduced. The accused must state, with particularity, which items of classified information he reasonably expects will be revealed by his defense.”

e. Mil. R. Evid. 505(i)(3) is amended to read as follows:

“(3) *Demonstration of national security nature of the information.* In order to obtain an in camera proceeding under this rule, the Government shall submit the classified information and an affidavit ex parte for examination by the military judge only. The affidavit shall demonstrate that disclosure of the information reasonably could be expected to cause damage to the national security in the degree required to warrant classification under the applicable executive order, statute, or regulation.”

f. Mil. R. Evid. 505(i)(4)(B) is amended to read as follows:

“*Standard.* Classified information is not subject to disclosure under this subdivision unless the information is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence. In presentencing proceedings, relevant and material classified information pertaining to the appropriateness of, or the appropriate degree of, punishment shall be admitted only if no unclassified version of such information is available.”

g. Mil. R. Evid. 505(j)(5) is amended to read as follows:

“(5) *Closed session.* The military judge may exclude the public during that portion of the presentation of evidence that discloses classified information.”

h. Mil. R. Evid. 609(a) is amended to read as follows:

“(a) *General rule.* For the purpose of attacking the credibility of a witness, (1) evidence that a witness other than the accused has been convicted of a crime shall be admitted, subject to Mil. R. Evid. 403, if the crime was punishable by death, dishonorable discharge, or imprisonment in excess

of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the military judge determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and (2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment. In determining whether a crime tried by court-martial was punishable by death, dishonorable discharge, or imprisonment in excess of one year, the maximum punishment prescribed by the President under Article 56 at the time of the conviction applies without regard to whether the case was tried by general, special, or summary court-martial.”.

i. Mil. R. Evid. 1101(d) is amended to read as follows:

“(d) *Rules inapplicable.* These rules (other than with respect to privileges and Mil. R. Evid. 412) do not apply in investigative hearings pursuant to Article 32; proceedings for vacation of suspension of sentence pursuant to Article 72; proceedings for search authorizations; proceedings involving pretrial restraint; and in other proceedings authorized under the code or this Manual and not listed in subdivision (a).”.

Sec. 3. Part IV of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Paragraph 37c is amended by inserting the following new subparagraphs (10) and (11) at the end thereof:

“(10) *Use.* ‘Use’ means to inject, ingest, inhale, or otherwise introduce into the human body, any controlled substance. Knowledge of the presence of the controlled substance is a required component of use. Knowledge of the presence of the controlled substance may be inferred from the presence of the controlled substance in the accused’s body or from other circumstantial evidence. This permissive inference may be legally sufficient to satisfy the government’s burden of proof as to knowledge.

(11) *Deliberate ignorance.* An accused who consciously avoids knowledge of the presence of a controlled substance or the contraband nature of the substance is subject to the same criminal liability as one who has actual knowledge.”.

b. The last paragraph of paragraph 37e is amended to read as follows:

“When any offense under paragraph 37 is committed: while the accused is on duty as a sentinel or lookout; on board a vessel or aircraft used by or under the control of the armed forces; in or at a missile launch facility used by or under the control of the armed forces; while receiving special pay under 37 U.S.C. Section 310; in time of war; or in a confinement facility used by or under the control of the armed forces, the maximum period of confinement authorized for such an offense shall be increased by 5 years.”.

c. Paragraph 43d is amended to read as follows:

“d. *Lesser included offenses.*

(1) *Premeditated murder and murder during certain offenses.* Article 118(2) and (3)—murder

(2) *All murders under Article 118.*

(a) Article 119—involuntary manslaughter

(b) Article 128—assault; assault consummated by a battery; aggravated assault

(c) Article 134—negligent homicide

(3) *Murder as defined in Article 118(1), (2), and (4).*

(a) Article 80—attempts

(b) Article 119—voluntary manslaughter

(c) Article 134—assault with intent to commit murder

(d) Article 134—assault with intent to commit voluntary manslaughter”.

d. Para 45d(1) is amended by adding the following at the end thereof:

“(e) Article 120(b)—carnal knowledge”.

e. Para 45f(1) is amended to read as follows:

“(1) Rape.

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 19____, rape _____ (a person who had not attained the age of 16 years).”.

f. The following new paragraph is inserted after paragraph 96:

“96a. Article 134 (Wrongful interference with an adverse administrative proceeding)

a. *Text.* See paragraph 60.

b. *Elements.*

(1) That the accused wrongfully did a certain act;

(2) That the accused did so in the case of a certain person against whom the accused had reason to believe there were or would be adverse administrative proceedings pending;

(3) That the act was done with the intent to influence, impede, or obstruct the conduct of such adverse administrative proceeding, or otherwise obstruct the due administration of justice;

(4) That under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* For purposes of this paragraph “adverse administrative proceeding” includes any administrative proceeding or action, initiated against a servicemember, that could lead to discharge, loss of special or incentive pay, administrative reduction in grade, loss of a security clearance, bar to reenlistment, or reclassification. Examples of wrongful interference include wrongfully influencing, intimidating, impeding, or injuring a witness, an investigator, or other person acting on an adverse administrative action; by means of bribery, intimidation, misrepresentation, or force or threat of force delaying or preventing communication of information relating to such administrative proceeding; and, the wrongful destruction or concealment of information relevant to such adverse administrative proceeding.

d. *Lesser included offenses.* None.

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.* In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 19____, wrongfully (endeavor to) [impede (an adverse administrative proceeding) (an investigation) (_____)] [influence the actions of _____, (an officer responsible for making a recommendation concerning the adverse administrative proceeding) (an individual responsible for making a decision concerning an adverse administrative proceeding) (an individual responsible for processing an adverse administrative proceeding) (_____)] [(influence) (alter) the testimony of _____ a witness before (a board established to consider an adverse administrative proceeding or elimination) (an investigating officer) (_____)] in the case of _____, by [(promising) (offering) (giving) to the said _____, (the sum of \$ _____) (_____) , of a value of about \$ _____] [commu-

nicating to the said _____ a threat to _____] [_____, (if) (unless) the said _____, would [recommend dismissal of the action against said _____] [(wrongfully refuse to testify) (testify falsely concerning _____) (_____)] [(at such administrative proceeding) (before such investigating officer) (before such administrative board)] [_____]”.

Sec. 4. These amendments shall take effect on January 21, 1994, subject to the following:

a. The amendments made to paragraphs 37c, 37e, 43d(2), 45d(1), and 96a of Part IV shall apply to any offense committed on or after January 21, 1994.

b. The amendments made to Section III shall apply only in cases in which arraignment has been completed on or after January 21, 1994.

c. The amendment made to Rules for Courts-Martial 405(i), 701(g)(3)(C), and 704(e) shall apply only in cases in which charges are preferred on or after January 21, 1994.

d. The amendments made to Rules for Courts-Martial 910, 918, and 920 shall apply only to cases in which arraignment occurs on or after January 21, 1994.

e. The amendments made to Rule for Courts-Martial 305 shall apply only to cases in which pretrial confinement is imposed on or after January 21, 1994.

f. The amendment to Rule for Courts-Martial 1103(g)(1)(A) shall apply only in cases in which the sentence is adjudged on or after January 21, 1994.

g. Nothing contained in these amendments shall be construed to make punishable any act done or omitted prior to January 21, 1994, which was not punishable when done or omitted.

h. The maximum punishment for an offense committed prior to January 21, 1994, shall not exceed the applicable maximum in effect at the time of the commission of such offense.

i. Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to January 21, 1994, and any such restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

Sec. 5. The Secretary of Defense, on behalf of the President, shall transmit a copy of this order to the Congress of the United States in accord with section 836 of title 10 of the United States Code.

William Clinton

THE WHITE HOUSE,
December 23, 1993.

Billing code 3195-01-P

Changes to the Discussion Accompanying the Manual for Courts-Martial, United States, 1984

A. The following Discussion is inserted after R.C.M. 109(c)(2):

“The term ‘unfitness’ should be construed broadly, including, for example, matters relating to the incompetence, impartiality, and misconduct of the

judge. Erroneous decisions of a judge are not subject to investigation under this rule. Challenges to these decisions are more appropriately left to the appellate process.”.

B. The following Discussion is inserted after R.C.M. 109(c)(3):

“Complaints need not be made in any specific form, but if possible complaints should be made under oath. Complaints may be made by judges, lawyers, a party, court personnel, members of the general public or members of the military community. Reports in the news media relating to the conduct of a judge may also form the basis of a complaint.

An individual designated to receive complaints under this subsection should have judicial experience. The chief trial judge of a service may be designated to receive complaints against military trial judges.”.

C. The following Discussion is inserted after R.C.M. 109(c)(4):

“Complaints under this subsection will be treated with confidentiality. Confidentiality protects the subject judge and the judiciary when a complaint is not substantiated. Confidentiality also encourages the reporting of allegations of judicial misconduct or unfitness and permits complaints to be screened with the full cooperation of others.

Complaints containing allegations of criminality should be referred to the appropriate criminal investigative agency in accordance with Appendix 3 of this Manual.”.

D. The following Discussion is inserted after R.C.M. 109(c)(5)(B):

“To avoid the type of conflict prohibited in Article 66(g), the Judge Advocate General’s designee should ordinarily not be a member of the same Court of Military Review as the subject of the complaint. If practicable, a former appellate military judge should be designated.”.

E. The following Discussion is inserted after R.C.M. 109(c)(6)(B):

“The discretionary reassignment of military trial judges or appellate military judges to meet the needs of the service is not professional disciplinary action.”.

F. The following Discussion is inserted after R.C.M. 109(c)(7):

“The Judge Advocate General concerned may appoint an ad hoc or a standing commission.”.

G. The Discussion to R.C.M. 701(g)(3) is amended by adding the following after the first paragraph:

“The sanction of excluding the testimony of a defense witness should be used only upon finding that the defense counsel’s failure to comply with this rule was willful and motivated by a desire to obtain a tactical advantage or to conceal a plan to present fabricated testimony. Moreover, the sanction of excluding the testimony of a defense witness should only be used if alternative sanctions could not have minimized the prejudice to the Government. Before imposing this sanction, the military judge must weigh the defendant’s right to compulsory process against the countervailing public interests, including (1) the integrity of the adversary process; (2) the interest in the fair and efficient administration of military justice; and (3) the potential prejudice to the truth-determining function of the trial process.”.

H. The Discussion following R.C.M. 910(a)(1) is amended to read as follows:

“See paragraph 2, Part IV, concerning lesser included offenses. When the plea is to a named lesser included offense without the use of exceptions and substitutions, the defense counsel should provide a written revised specification accurately reflecting the plea and request that the revised specification be included in the record as an appellate exhibit. A plea of guilty to a lesser included offense does not bar the prosecution from proceeding on the offense as charged. See also subsection (g) of this rule.

A plea of guilty does not prevent the introduction of evidence, either in support of the factual basis for the plea, or, after findings are entered, in aggravation. See R.C.M. 1001(b)(4)."

I. The last two paragraphs of the Discussion accompanying R.C.M. 918(a)(1), are amended to read as follows:

"Lesser included offenses. If the evidence fails to prove the offense charged but does prove an offense necessarily included in the offense charged, the factfinder may find the accused not guilty of the offense charged but guilty of a named lesser offense, which is included in the offense charged, without the use of exceptions and substitutions. Ordinarily, an attempt is a lesser included offense even if the evidence establishes that the offense charged was consummated. See Part IV concerning lesser included offenses.

Offenses arising from the same act or transaction. The accused may be found guilty of two or more offenses arising from the same act or transaction, whether or not the offenses are separately punishable. *But see* R.C.M. 906(b)(12); 907(b)(3)(B); 1003(c)(1)(C)."

J. The Discussion accompanying R.C.M. 920(b) is amended to read as follows:

"After members have reached a finding on a specification, instructions may not be given on an offense included therein which was not described in an earlier instruction unless the finding is illegal. This is true even if the finding has not been announced. When instructions are to be given is a matter within the sole discretion of the military trial judge."

Changes to the Analysis Accompanying the Manual for Courts-Martial, United States, 1984

1. Changes to Appendix 21, the Analysis accompanying the Rules for Courts-Martial (Part II, MCM, 1984).

a. R.C.M. 109. The Analysis is amended by inserting the following at the end thereof:

"1993 Amendment: Subsection (a) was amended to conform with subsection (c). The amendment to subsection (a) clarifies that the Judge Advocates General are responsible for the supervision and discipline of judges and attorneys. The amendment to subsection (a) is not intended to limit the authority of a Judge Advocate General in any way.

New subsection (c) is based on Article 6a, Uniform Code of Military Justice. Article 6a was enacted by the Defense Authorization Act for Fiscal Year 1990. "Military Appellate Procedures," title XIII, § 1303, National Defense Authorization Act for Fiscal Year 1990, Pub. L. No. 101-189, 103 Stat. 1352, 1576 (1989). The legislative history reveals Congressional intent that, to the extent consistent with the Uniform Code of Military Justice, the procedures to investigate and dispose of allegations concerning judges in the military should emulate those procedures found in the civilian sector. See *H.R. Conf. Rep. No. 331, 101st Cong., 1st Sess. 656 (1989) [hereinafter Conf. Rep. No. 331]*. The procedures established by subsection (c) are largely patterned after the pertinent sections of the *ABA Model Standards Relating to Judicial Discipline and Disability Retirement (1978) [hereinafter ABA Model Standard]* and the procedures dealing with the investigation of complaints against federal judges in *28 U.S.C. § 372 (1988)*. The rule recognizes, however, the overall responsibility of the Judge Advocates General for the certification, assignment, professional supervision and discipline of military trial and appellate military judges. See Articles 6, 26 & 66, Uniform Code of Military Justice.

Subsection (c)(2) is based on the committee report accompanying the FY 90 Defense Authorization Act. See *Conf. Rep. No. 331 at 658*. This subsection is designed to increase public confidence in the military justice system while contributing to the integrity of the system. See *Landmark Communications v. Virginia, 435 U.S. 829 (1978)*.

The first sentence of the Discussion to subsection (c)(2) is based on the committee report accompanying the Defense Authorization Act. *Conf. Rep. No. 331 at 358*. The second and third sentences of the discussion are based on the commentary to *ABA Model Standard 3.4*. See also *Chandler v. Judicial Council*, 398 U.S. 74 (1970).

Subsections (c)(3), (c)(5), and (c)(7) reflect, and adapt to the conditions of military practice, the general principle that judges should investigate judges.

The first paragraph of the Discussion to subsection (c)(3) is based on the commentary to *ABA Model Standard 4.1*.

The discussion to subsection (c)(4) is based on the commentary to *ABA Model Standard 4.6*.

The clear and convincing standard found in subsection (c)(6)(c) is based on *ABA Model Standard 7.10*.

Under subsection (c)(7), the principal purpose of the commission is to advise the Judge Advocate General concerned as to whether the allegations contained in a complaint constitute a violation of applicable ethical standards. This subsection is not intended to preclude use of the commission for other functions such as rendering advisory opinions on ethical questions. See *ABA Model Standard 9* on the establishment and role of an advisory committee.

Subsection (c)(7)(A) is based on *ABA Model Standard 2.3*, which provides that one-third of the members of a commission should be active or retired judges."

b. R.C.M. 305(f). The Analysis accompanying R.C.M. 305(f) is amended by inserting the following at the end thereof:

"1993 Amendment: The amendment to subsection (f) provides a specific time period by which to measure compliance. Because it is possible to obtain credit for violations of this section under subsection (k), a standard of compliance was thought necessary. See, e.g., *United States v. Chapman*, 26 M.J. 515 (A.C.M.R. 1988), *pet. denied* 27 M.J. 404 (C.M.A. 1989). This amendment, while protecting the rights of the prisoner, also gives reasonable protection to the Government in those cases where the prisoner is confined in a civilian facility and the request is never, or is belatedly, communicated to military authorities. While it is expected that military authorities will have procedures whereby civilian confinement authorities communicate such requests in a timely fashion, the failure to communicate such a request, or the failure to notify military authorities in a timely manner should be tested for prejudice under Article 59, and should not be considered as invoking the credit provisions of subsection (k) of this rule."

c. R.C.M. 305(h)(2)(A). The Analysis accompanying R.C.M. 305(h)(2)(A) is amended by inserting the following at the end thereof:

"1993 Amendment: The amendment to subsection (h)(2)(A) clarifies that the 72 hour period operates in two distinct situations: (a) if the commander orders the prisoner into pretrial confinement, the commander has 72 hours to decide whether pretrial confinement will continue, and (b) if someone other than the prisoner's commander orders the prisoner into pretrial confinement, the prisoner's commander has 72 hours from receipt of a report that the prisoner has been confined to decide whether pretrial confinement will continue."

d. R.C.M. 305(i)(1). The Analysis accompanying R.C.M. 305(i)(1) is amended by inserting the following at the end thereof:

"1993 Amendment: The amendment to subsection (i)(1) provides that the required review only becomes applicable whenever the accused is confined under military control. For example, if the prisoner was apprehended and is being held by civilian authorities as a military deserter in another state from where the prisoner's unit is located and it takes three days to transfer the prisoner to an appropriate confinement facility, the seven

day period under this rule would not begin to run until the date of the prisoner's transfer to military authorities. Any unreasonable period of time that it may take to bring a prisoner under military control should be tested for prejudice under Article 59, and should not be considered as invoking the credit provisions of subsection (k) of this rule absent evidence of bad faith by military authorities in utilizing civilian custody. *But see United States v. Ballesteros*, 29 M.J. 14 (C.M.A. 1989). However, any time spent in civilian custody at the request of military authorities would be subject to pretrial confinement credit mandated by *United States v. Allen*, 17 M.J. 126 (C.M.A. 1984).

The amendment further clarifies the method of calculation to determine if the rule has been violated. *See United States v. DeLoatch*, 25 M.J. 718 (A.C.M.R. 1987); *contra, United States v. New*, 23 M.J. 889 (A.C.M.R. 1987)."

e. R.C.M. 405(i). The Analysis accompanying R.C.M. 405(i) is amended by inserting the following at the end thereof:

"1993 Amendment: The amendment to R.C.M. 405(i) makes the provisions of Mil. R. Evid. 412 applicable at pretrial investigations."

f. R.C.M. 701(g)(3)(C). The Analysis accompanying R.C.M. 701(g)(3)(C) is amended by inserting the following at the end thereof:

"1993 Amendment: The amendment to R.C.M. 701(g)(3)(C), based on the decision of *Taylor v. Illinois*, 484 U.S. 400 (1988), recognizes that the Sixth Amendment compulsory process right does not preclude a discovery sanction that excludes the testimony of a material defense witness. This sanction, however, should be reserved to cases where the accused has willfully and blatantly violated applicable discovery rules, and alternative sanctions could not have minimized the prejudice to the Government. *See Chappee v. Commonwealth of Massachusetts*, 659 F.Supp. 1220 (D. Mass. 1988). The Discussion to R.C.M. 701(g)(3)(C) adopts the test, along with factors the judge must consider, established by the *Taylor* decision."

g. R.C.M. 704(e). The Analysis accompanying R.C.M. 704(e) is amended by inserting the following at the end thereof:

"1993 Amendment. Subsection (e) to R.C.M. 704 was amended to make the military practice for granting immunity for defense witnesses consistent with the majority rule within the Federal Courts. *United States v. Burns*, 684 F.2d 1066 (2d Cir. 1982), *cert. denied*, 459 U.S. 1174 (1983); *United States v. Shandell*, 800 F.2d 322 (2d Cir. 1986); *United States v. Turkish*, 623 F.2d 769 (2d Cir. 1980), *cert. denied*, 449 U.S. 1077 (1981); *United States v. Thevis*, 665 F.2d 616 (5th Cir. 1982), *cert. denied*, 459 U.S. 825 (1982); *United States v. Pennell*, 737 F.2d 521 (6th Cir. 1984); *United States v. Taylor*, 728 F.2d 930 (7th Cir. 1984); *United States v. Brutzman*, 731 F.2d 1449 (9th Cir. 1984); *McGee v. Crist*, 739 F.2d 505 (10th Cir. 1984); *United States v. Sawyer*, 799 F.2d 1494 (11th Cir. 1986). The amended rule conforms R.C.M. 704(e) with case law requiring the military judge to consider the Government's interest in not granting immunity to the defense witness. *See United States v. Smith*, 17 M.J. 994, 996 (A.C.M.R. 1984), *pet. denied*, 19 M.J. 71 (C.M.A. 1984); *United States v. O'Bryan*, 16 M.J. 775 (A.F.C.M.R. 1983), *pet. denied*, 18 M.J. 16 (C.M.A. 1984)."

The majority rule recognizes that an accused has no Sixth Amendment right to immunized testimony of defense witnesses and, absent prosecutorial misconduct which is intended to disrupt the judicial fact-finding process, an accused is not denied Fifth Amendment due process by the Government's failure to immunize a witness. If the military judge finds that the witness is a target for prosecution, there can be no claim of Government overreaching or discrimination if a grant of immunity is denied. *United States v. Shandell*, *supra*.

The prior military rule was based on *United States v. Villines*, *supra*, which had adopted the minority view espoused in *Government of Virgin Islands v. Smith*, 615 F.2d 964 (3d Cir. 1980). This view permitted the court to also immunize a defense witness when the witness' testimony

was clearly exculpatory, essential to the defense case and there was no strong Government interest in withholding testimonial immunity. This rule has been sharply criticized. See, e.g., *United States v. Turkish, supra*; *United States v. Taylor, supra*; *United States v. Pennel, supra*; *United States v. Zayas*, 24 M.J. 132, 137 (C.M.A. 1987)(dissenting opinion by Judge Cox).

The current rule continues to recognize that a military judge is not empowered to immunize a witness. Upon a finding that all three prerequisites exist, a military judge may only abate the proceedings for the affected charges and specifications unless the convening authority grants immunity to the witness."

h. R.C.M. 910(a)(1). The Analysis accompanying R.C.M. 910(a)(1) is amended by inserting the following at the end thereof:

"1993 Amendment: The amendment to R.C.M. 910(a)(1) removed the necessity of pleading guilty to a lesser included offense by exceptions and substitutions. This parallels the amendment to R.C.M. 918(a)(1), allowing a finding of guilty to a named lesser included offense without mandating the use of exceptions and substitutions, made to more closely correspond to verdict practice in federal district courts. See Analysis comments for R.C.M. 918(a)(1)."

i. R.C.M. 918(a)(1). The Analysis accompanying R.C.M. 918(a)(1) is amended by inserting the following at the end thereof:

"1993 Amendment: The amendment to R.C.M. 918(a)(1) allows for a finding of guilty of a named lesser included offense of the charged offense, and eliminates the necessity of making findings by exceptions and substitutions. This serves to conform military practice to that used in criminal trials before federal district courts. See Fed. R. Crim. P. 31(c); E. Devitt and C. Blackman, **Federal Jury Practice and Instructions**, 18.07 (1977). The practice of using exceptions and substitutions is retained for those cases in which the military judge or court members must conform the findings to the evidence actually presented, e.g., a larceny case in which the finding is that the accused stole several of the items alleged in the specification but not others."

j. R.C.M. 920(b). The Analysis accompanying R.C.M. 920(b) is amended by inserting the following at the end thereof:

"1993 Amendment: The amendment to R.C.M. 920(b) is based on the 1987 amendments to Federal Rule of Criminal Procedure 30. Federal Rule of Criminal Procedure 30 was amended to permit instructions either before or after arguments by counsel. The previous version of R.C.M. 920 was based on the now superseded version of the federal rule.

The purpose of this amendment is to give the court discretion to instruct the members before or after closing arguments or at both times. The amendment will permit courts to continue instructing the members after arguments as Rule 30 and R.C.M. 920(b) had previously required. It will also permit courts to instruct before arguments in order to give the parties an opportunity to argue to the jury in light of the exact language used by the court. See *United States v. Slubowski*, 7 M.J. 461 (C.M.A. 1979); *United States v. Pendry*, 29 M.J. 694 (A.C.M.R. 1989)."

k. The Analysis accompanying R.C.M. 1103(g)(1)(A) is amended by inserting the following at the end thereof:

"1993 Amendment: Subsection (g)(1)(A) was amended by adding the phrase "and are subject to review by a Court of Military Review under Article 66" to eliminate the need to make four copies of verbatim records of trial for courts-martial which are not subject to review by a Court of Military Review. These cases are reviewed in the Office of the Judge Advocate General under Article 69 and four copies are not ordinarily necessary."

2. Changes to Appendix 22, the Analysis accompanying the Military Rules of Evidence (Part III, MCM, 1984).

a. The Analysis accompanying M.R.E. 303 is amended by inserting the following at the end thereof:

"1993 Amendment: R.C.M. 405(i) and Mil. R. Evid 1101(d) were amended to make the provisions of Mil. R. Evid. 412 applicable at pretrial investigations. These changes ensure that the same protections afforded victims of nonconsensual sex offenses at trial are available at pretrial hearings. See Criminal Justice Subcommittee of House Judiciary Committee Report, 94th Cong., 2d Session, July 29, 1976. Pursuant to these amendments, Mil. R. Evid. 412 should be applied in conjunction with Mil. R. Evid. 303. As such, no witness may be compelled to answer a question calling for a personally degrading response prohibited by Rule 303. Mil. R. Evid. 412, however, protects the victim even if the victim does not testify. Accordingly, Rule 412 will prevent questioning of the victim or other witness if the questions call for responses prohibited by Rule 412."

b. The Analysis accompanying M.R.E. 311(e)(2) is amended by inserting the following at the end thereof:

"1993 Amendment: The amendment to Mil. R. Evid. 311(e)(2) was made to conform Rule 311 to the rule of *New York v. Harris*, 495 U.S. 14 (1990). The purpose behind the exclusion of derivative evidence found during the course of an unlawful apprehension in a dwelling is to protect the physical integrity of the dwelling, not to protect suspects from subsequent lawful police interrogation. See *id.* A suspect's subsequent statement made at another location that is the product of lawful police interrogation is not the fruit of the unlawful apprehension. The amendment also contains language added to reflect the "good faith" exception to the exclusionary rule set forth in *United States v. Leon*, 468 U.S. 897 (1984), and the "inevitable discovery" exception set forth in *Nix v. Williams*, 467 U.S. 431 (1984)."

c. The Analysis accompanying Mil. R. Evid. 412 is amended by inserting the following at the end thereof:

"1993 Amendment. R.C.M. 405(i) and Mil. R. Evid. 1101(d) were amended to make the provisions of Rule 412 applicable at pretrial investigations. Congress intended to protect the victims of nonconsensual sex crimes at preliminary hearings as well as at trial when it passed Fed. R. Evid. 412. See Criminal Justice Subcommittee of the House Judiciary Committee Report, 94th Cong., 2d Session, July 1976."

d. The Analysis accompanying M.R.E. 505(a) is amended by inserting the following at the end thereof:

"1993 Amendment: The second sentence was added to clarify that this rule, like other rules of privilege, applies at all stages of all actions and is not relaxed during the sentencing hearing under M.R.E. 1101(c)."

e. The Analysis accompanying M.R.E. 505(g) is amended by inserting the following at the end thereof:

"1993 Amendment: Subsection (g)(1)(D) was amended to make clear that the military judge's authority to require security clearances extends to persons involved in the conduct of the trial as well as pretrial preparation for it. The amendment requires persons needing security clearances to submit to investigations necessary to obtain the clearance."

f. The Analysis accompanying M.R.E. 505(h) is amended by inserting the following at the end thereof:

"1993 Amendment: Subsection (h)(3) was amended to require specificity in detailing the items of classified information expected to be introduced. The amendment is based on *United States v. Collins*, 720 F.2d. 1195 (11th Cir. 1983)."

g. The Analysis accompanying M.R.E. 505(i) is amended by inserting the following at the end thereof:

"1993 Amendment: Subsection (i)(3) was amended to clarify that the classified material and the government's affidavit are submitted only to the military judge. The word "only" was placed at the end of the sentence to make it clear that it refers to "military judge" rather than to "examination."

The military judge is to examine the affidavit and the classified information without disclosing it before determining to hold an in camera proceeding as defined in subsection (i)(1). The second sentence of subsection (i)(4)(B) was added to provide a standard for admission of classified information in sentencing proceedings.”.

h. The Analysis accompanying M.R.E. 505(j) is amended by inserting the following at the end thereof:

“1993 Amendment: Subsection (j)(5) was amended to provide that the military judge’s authority to exclude the public extends to the presentation of any evidence that discloses classified information, and not merely to the testimony of witnesses. See generally *United States v. Hershey*, 20 M.J. 433 (C.M.A. 1985), cert. denied, 474 U.S. 1062 (1986).”.

i. The Analysis accompanying Mil. R. Evid. 609(a) is amended by adding the following at the end thereof:

“1993 Amendment. The amendment to Mil. R. Evid. 609(a) is based on the 1990 amendment to Fed. R. Evid. 609(a). The previous version of Mil. R. Evid. 609(a) was based on the now superseded version of the Federal Rule. This amendment removes from the rule the limitation that the conviction may only be elicited during cross-examination. Additionally, the amendment clarifies the relationship between Rules 403 and 609. The amendment clarifies that the special balancing test found in Mil. R. Evid. 609(a)(1) applies to the accused’s convictions. The convictions of all other witnesses are only subject to the Mil. R. Evid. 403 balancing test. See *Green v. Bock Laundry Machine Co.*, 490 U.S. 504 (1989).”.

j. The Analysis accompanying Mil. R. Evid. 1101(d) is amended by inserting the following at the end thereof:

“1993 Amendment. Mil. R. Evid. 1101(d) was amended to make the provisions of Mil. R. Evid. 412 applicable at pretrial investigations.”.

3. Changes to Appendix 21, the Analysis accompanying the punitive articles (Part IV, MCM, 1984).

a. The Analysis accompanying paragraph 37c, Part IV, is amended by inserting the following at the end thereof:

“1993 Amendment. Paragraph c was amended by adding new paragraphs (10) and (11). Subparagraph (10) defines the term “use” and delineates knowledge of the presence of the controlled substance as a required component of the offense. See *United States v. Mance*, 26 M.J. 244 (C.M.A. 1988). The validity of a permissive inference of knowledge is recognized. See *United States v. Ford*, 23 M.J. 331 (C.M.A. 1987); *United States v. Harper*, 22 M.J. 157 (C.M.A. 1986). Subparagraph (11) precludes an accused from relying upon lack of actual knowledge when such accused has purposefully avoided knowledge of the presence or identity of controlled substances. See *United States v. Mance*, supra (Cox, J., concurring). When an accused deliberately avoids knowing the truth concerning a crucial fact (i.e., presence or identity) and there is a high probability that the crucial fact does exist, the accused is held accountable to the same extent as one who has actual knowledge. See *United States v. Newman*, 14 M.J. 474 (C.M.A. 1983). Subsection (11) follows federal authority which equates actual knowledge with deliberate ignorance. See *United States v. Ramsey*, 785 F.2d 184 (7th Cir.), cert. denied, 476 U.S. 1186 (1986).”.

b. The Analysis accompanying paragraph 43d(2), Part IV, is amended by inserting the following at the end thereof:

“1993 Amendment. The listed lesser included offenses of murder under Article 118(3) were changed to conform to the rationale of *United States v. Roa*, 12 M.J. 210 (C.M.A. 1982). Inasmuch as Article 118(3) does not require specific intent, attempted murder, voluntary manslaughter, assault

with intent to murder and assault with intent to commit voluntary manslaughter are not lesser included offenses of murder under Article 118(3).”.

c. The Analysis accompanying paragraph 45(d), Part IV, is amended by inserting the following at the end thereof:

“1993 Amendment. The amendment to para 45d(1) represents an administrative change to conform the Manual with case authority. Carnal knowledge is a lesser included offense of rape where the pleading alleges that the victim has not attained the age of 16 years. See *United States v. Baker*, 28 M.J. 900 (A.C.M.R. 1989); *United States v. Stratton*, 12 M.J. 998 (A.F.C.M.R. 1982), *pet. denied*, 15 M.J. 107 (C.M.A. 1983); *United States v. Smith*, 7 M.J. 842 (A.C.M.R. 1979).”.

d. The Analysis accompanying paragraph 96a, Part IV, is amended by inserting the following after the analysis to paragraph 96:

“1993 Amendment. Paragraph 96a is new and proscribes conduct that obstructs administrative proceedings. See generally 18 U.S.C. § 1505, *Obstruction of proceedings before departments, agencies, and committees*. This paragraph, patterned after paragraph 96, covers obstruction of certain administrative proceedings not currently covered by the definition of criminal proceeding found in paragraph 96c. This paragraph is necessary given the increased number of administrative actions initiated in each service.”.

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