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

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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
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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

WHEN: January 31, at 9:00 a.m.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: 202–523–5240.

DIRECTIONS: North on 11th Street from Metro Center to southwest corner of 11th and L Streets

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-91-420FR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Grade, Size, and Container Marking Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule an interim final rule which temporarily relaxed minimum grade and size requirements and suspended container marking requirements for oranges and grapefruit grown in Texas through February 15, 1992, the projected conclusion of the shipping period for this season. The relaxations were unanimously recommended by the Texas Valley Citrus Committee (committee). The relaxations were based on this season's crop and market demand conditions, and are expected to help the Texas citrus industry successfully market its orange and grapefruit crops.

EFFECTIVE DATE: February 18, 1992.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–9918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 906, both as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas.

This agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 10 handlers subject to regulation under the marketing order for oranges and grapefruit grown in Texas, and about 2,000 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The committee meets prior to and during each season to review the handling requirements for Texas oranges and grapefruit, which are in effect on a continuous basis. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information to determine whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

An interim final rule was issued October 24, 1991, and published in the **Federal Register** (56 FR 55981, October 31, 1991), with an effective date of October 24, 1991, and a 30-day comment period ending December 2, 1991. No comments were received.

The minimum grade and size requirements for fresh shipments of oranges and grapefruit grown in Texas are effective under § 906.365 (7 CFR 906.365).

The interim final rule temporarily relaxed the minimum grade requirement of U.S. No. 2 for Texas oranges permitting fruit to be shipped with very serious damage due to thorn scratches and scale not exceeding the acceptance numbers specified in § 51.689, and permitting any amount of green spots, oil spots, and discoloration. Remaining in effect unchanged by that action was the minimum size requirement of 2$^{6}/_{16}$ inches for Texas oranges.

The interim final rule also temporarily relaxed the minimum grade requirement of U.S. No. 2 for Texas grapefruit permitting shipment of misshapen fruit and fruit with very serious damage due to thorn scratches and scale which does not exceed the acceptance numbers specified in § 51.628 for very serious damage, and permitted any amount of green spots. In addition, the rule temporarily lowered the current minimum size requirement for all Texas grapefruit to 3$^{5}/_{16}$ inches in diameter from 3$^{6}/_{16}$ inches in diameter.

The interim final rule also temporarily suspended the requirement that certain containers of Texas oranges and grapefruit be marked U.S. No. 2, as provided in § 906.340 (7 CFR 906.340). The suspension was necessary because the grade relaxation permitted a grade lower than U.S. No. 2 to be shipped.

The committee reported that the 1991–92 season Texas orange and grapefruit crops would be very small, and that the fruit had more skin blemishes than normal. The grade and size relaxations were designed to permit as much fruit to be shipped to the fresh market this season as crop conditions will allow, while providing consumers with an acceptable product. The relaxations were expected to help the Texas citrus industry successfully market this season's citrus crops and have a positive effect on producer returns.

The minimum grade and size requirements for imported oranges specified in § 944.312 (7 CFR part 944) were amended by a rule issued October

24, 1991, and published in the Federal Register (56 FR 55983, October 31, 1991). That rule temporarily suspended the minimum grade requirements for imported oranges. The orange import requirements are effective under section 8e of the Act (7 U.S.C. section 608e–1), and based on the requirements for Texas grown oranges specified in § 906.365. Any reinstatement of orange import grade requirements would be included under a separate rulemaking action.

Texas orange and grapefruit shipments to fresh markets in the United States, Canada, and Mexico are subject to handling requirements effective under this marketing order. Exempt from such handling requirements are shipments made: (1) Within the production area (Cameron, Hidalgo, and Willacy counties in Texas); (2) in individually addressed gift packages aggregating not more than 500 pounds which are not for resale; (3) under the 400 pound minimum quantity exemption provision, and (4) for relief, charity, and home use. In addition, fruit shipped to approved processors for processing may be exempted from the handling requirements.

This action reflects the committee's and the Department's appraisal of the need to maintain the relaxed requirements. The Department believes that relaxed requirements will have a beneficial impact on producers and handlers because it will permit 1991–92 orange and grapefruit shipments consistent with anticipated crop and market conditions. The application of handling requirements to Texas oranges and grapefruit over the years has been beneficial to the Texas citrus industry in marketing its crops.

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

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, as published in the Federal Register (56 FR 55981, October 31, 1991), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending the provisions of § 905.306, which was published in the Federal Register (56 FR 55981, October 31, 1991), is adopted as a final rule without change.

Note: This section will appear in the annual Code of Federal Regulations.

Dated: January 13, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–1210 Filed 1–15–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 981

[FV–91–463FR]

Handling of Almonds Grown in California; Extension of Date for Satisfying Reserve Disposition Obligation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule extends until January 20, 1992, the date by which handlers of California almonds must satisfy their 1990–91 crop year reserve disposition obligation. This rule is being issued because of a recent court action regarding the current December 31, 1991, disposition date.

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Specialist, MOAB, F&V, AMS, USDA, P.O. Box 96456, Room 2536–S, Washington, DC 20009–6456; telephone: (202) 205–2830.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 981 [7 CFR part 981], as amended, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statues have small entity orientation and compatibility.

There are approximately 115 handlers of almonds who are subject to regulation under the almond marketing order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action relaxes restrictions on almond handlers and will not impose any additional burden or costs on handlers.

The salable, reserve, and export percentages for the 1990–91 almond crop were first established in a final rule published in the Federal Register on September 21, 1990 [55 FR 38793]. The initial salable percentage was 65 percent, the reserve percentage was 35 percent, and the export percentage was 0 percent. The Board based its recommendations on the then current estimates of marketable supply and combined domestic and export trade demand for the 1990–91 crop year.

On December 3, 1990, the Board unanimously recommended revising the salable and reserve percentages. Subsequently, an interim final rule revising the salable percentage from 65 to 70 percent and revising the reserve percentage from 35 to 30 percent was published in the Federal Register on February 11, 1991 [56 FR 5307].

At its February 21, 1991, meeting the Board unanimously recommended to further revise the almond salable and reserve percentages for the 1990–91 crop year from 70 to 80 percent and 30 to 20 percent respectively. A final rule was published in the Federal Register on May 31, 1991 [56 FR 24678].

The Board made its final review of the 1990–91 crop year salable and reserve percentages at its May 10, 1991, meeting. The Board unanimously recommended to increase the salable percentage from 80 percent to 93 percent and to decrease the reserve percentage from 20 percent to 7 percent. A final rule was published in the Federal Register on September 30, 1991 [56 FR 49392].

Section 981.66(e) of the order provides that all reserve almonds which remain unsold as of September 1 of the next crop year shall be disposed of by the Board as soon as practicable through the most readily available reserve outlets. The date of September 1 may be extended to a later date by the Secretary, upon recommendation of the Board or other information.

In a mail vote completed on October 19, 1990, the Board unanimously recommended to extend the reserve disposition date to December 31, 1991, for the 1990–91 crop year only. This action was an effort on the part of the Board to give handlers additional time to dispose of their reserve almonds. A final rule was published in the Federal Register on March 14, 1991 [56 FR 10793].

This action extends the disposition obligation date until January 20, 1992, and is being taken by the Department because of a recent court action regarding the current December 31, 1991, disposition date. A temporary restraining order was granted in U.S. District Court in California on December 19, 1991, which prevents the Board from disposing of plaintiff handler's remaining 1990–91 reserve almonds. This rule is being issued because a hearing for a preliminary injunction on this issue is scheduled for January 13, 1992.

Based on the above, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant matter presented and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action relaxes restrictions on handlers by extending until January 20, 1992, the date for disposing reserve almonds and (2) this action should be taken as soon as possible so that handlers may plan their operations accordingly.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. Section 981.467 is amended by revising a rule that was published in the Federal Register on March 14, 1991 [56 FR 10793]. Paragraph (d) is revised to read as follows:

§ 981.467 Disposition in reserve outlets by handlers.

* * * * *

(d) For the 1990–91 crop year only, the reserve disposition obligation date is extended until January 20, 1992.

Dated: December 31, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–1053 Filed 1–15–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 989

[FV–91–437 FR]

Expenses and Assessment Rate for 1991–92 Crop Year; Raisins Produced From Grapes Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes a total budget of $594,700 and establishes an assessment rate of $1.90 per ton of assessable raisins for the 1991–92 crop year under the federal marketing order for raisins produced from grapes grown in California. Authorization of this budget will allow the Raisin Administrative Committee (Committee), established under the marketing order, to incur reasonable and necessary operating expenses to locally administer the order and to collect funds to pay these expenses during that crop year. Funds for the program are derived from assessments on handlers of California raisins. The 1991–92 crop year began August 1, 1991.

EFFECTIVE DATE: August 1, 1991, through July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Specialist, Marketing Order Administration Branch, room 2525–S, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2020.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 989 [7 CFR part 989], both as amended, regulating the handling of raisins produced from grapes grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 23 handlers of California raisins subject to regulation under this marketing order and approximately 5,000 producers of California raisins. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts for the last three years of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The minority of handlers and the majority of producers of raisins may be classified as small entities.

The federal marketing order for California raisins requires that the assessment rate for a particular marketing year shall apply to all assessable raisins acquired from the beginning of such year. An annual budget of expenses is prepared by the

Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of regulated raisins. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings, so that all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected acquisitions of assessable raisins—313,000 tons. That rate is applied to actual acquisitions to produce sufficient income to pay the Committee's expected expenses. The budget of expenses and rate of assessment are usually recommended by the Committee shortly after the season starts. Expenses are incurred on a continuous basis; therefore, the budget of annual expenses and assessment rate approval must be expedited so that the Committee will have funds to meet its obligations.

The Raisin Administrative Committee (Committee) met on October 10, 1991, and unanimously recommended 1991–92 expenditures in the amount of $516,735, together with a reserve for contingencies of $77,965 for a total of $594,700 and a rate of assessment of $1.90 per ton of assessable raisins acquired under the marketing order. In comparison, 1990–91 budgeted expenditures were $540,550, which included a reserve for contingencies of $37,770 and the assessment rate was $1.90. Total income for 1990–91 was $649,687, and actual expenditures were $420,874. Unexpended funds from the 1990–91 season were credited or refunded to the handlers from whom collected. Major expenditure categories for the 1991–92 crop year and actual 1990–91 expenses (in parentheses) are as follows: $212,000, ($203,808) for executive salaries; $95,000, ($75,924) for office personnel salaries; $50,000, ($27,924) for Committee travel; $40,000, ($37,892) for compliance staff salaries; and $40,000, ($32,014) for insurance and bonds.

While this action imposes some additional costs on handlers of California raisins, including small entities, the costs are in the form of uniform assessments on all handlers. Any costs to handlers are expected to be more than offset by benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new § 989.342 and is based on Committee recommendations and other information. A proposed rule on the authorization of expenses and establishment of an assessment rate for the 1991–92 crop year was published in the December 4, 1991, issue of the **Federal Register** [56 FR 63469]. Comments on the proposed rule were invited from interested persons until December 16, 1991. No comments were received. That proposal, incorrectly stated that the assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of assessable raisins. Pursuant to § 989.80 of the order, assessments are based on acquisitions of assessable raisins. This final rule has been corrected accordingly.

After consideration of the information and recommendation submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This rule should be expedited because the Committee needs to have funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Committee at a public meeting. Therefore, it is found that good cause exists for not postponing the effective date of this action until February 18, 1992 [5 U.S.C. 553].

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.342 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 989.342 Expenses and assessment rate.

Expenses of $594,700 by the Raisin Administrative Committee are authorized and an assessment rate payable by each handler in accordance with section 989.80 of $1.90 per ton of assessable raisins is established for the crop year ending July 31, 1992. Any unexpended funds from that crop year shall be credited or refunded to the handler from whom collected.

Dated: January 9, 1992.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–1052 Filed 1–15–92; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 204

[INS No. 1434–91]

RIN 1115–AC59

Employment-Based Immigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Correction to rule document.

SUMMARY: This corrects errors in the final rule published on November 29, 1991, beginning at 56 FR 60897 regarding new employment-based immigrant classifications and requirements under Public Law 101–649.

EFFECTIVE DATE: November 29, 1991.

FOR FURTHER INFORMATION CONTACT: Edward H. Skerrett, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, telephone (202) 514–3946.

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

§ 204.6 [Corrected]

1. On page 60910, in the second column, in § 204.6(a), in the eighth line, remove the term "or by his or her authorized representative".

2. On page 60911, in the second column, in § 204.6(h)(3), in the last line, the reference "204.6(j)(3)(ii)" should read "204.6(j)(4)(ii)".

Dated: January 7, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92–1216 Filed 1–15–92; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Ch. I

[Docket No. RM91-5-000]

Preferences at Relicensing of Units of Development; Statement of Policy

Issued December 19, 1991.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Statement of policy.

SUMMARY: The Federal Energy Regulatory Commission (Commission), on February 20, 1991, issued a Notice of Inquiry (NOI) inviting comment on a series of related questions that involve the licensing of incremental hydroelectric capacity contemporaneous with the relicensing of the unit of development in which the capacity is located. These questions encompassed the matters of whether Congress, in enacting the Electric Consumers Protection Act of 1986 (ECPA), intended to preserve either a municipal preference or a preliminary permittee's preference with respect to the development of previously undeveloped hydroelectric capacity at an existing unit of development when the incumbent licensee also seeks to develop that incremental capacity as a part of its relicensing application. Conversely, did Congress intend that the unit of development (including both developed and undeveloped capacity therein) be considered at relicensing as an indivisible unit with respect to preferences (including the incumbent's licensee's marginal preference)?

Based on the comments received in response to the NOI, the Commission is issuing a statement of policy. The policy statement concludes that the question of whether to defer consideration of applications for incremental capacity at a licensed project whose term is nearing expiration should be decided on a case-by-case basis. The policy statement sets forth a series of principles on how the Commission will resolve such issues when they arise. Briefly summarized, these principles include: (1) Applications for relicense and applications for incremental capacity, if filed within a reasonably contemporaneous time period, will be considered together in a single comprehensive proceeding; (2) the total usable capacity at the site will be determined before any of that capacity is licensed or relicensed; and (3) the applicability of the various preferences will depend on the nature of the capacity that the various applications seek in competition with each other.

EFFECTIVE DATE: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-1269.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this docket in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308 at the Commission's Headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice of inquiry will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

I. Background

On February 20, 1991, the Federal Energy Regulatory Commission (Commission) issued a Notice of Inquiry (NOI) [1] inviting comment on a series of related questions that involve the licensing of incremental hydroelectric capacity contemporaneous with the relicensing of the unit of development in which the capacity is located. These questions encompassed the matters of whether Congress, in enacting the Electric Consumers Protection Act of 1986 (ECPA),[2] intended to preserve either a municipal preference or a preliminary permittee's preference with respect to the development of previously undeveloped hydroelectric capacity at an existing licensed unit of development when the incumbent licensee also seeks to develop that incremental capacity as a part of its relicensing application. Conversely, did Congress intend that the unit of development (including both developed and undeveloped capacity therein) be considered at relicensing as an indivisible unit with respect to preferences (including the incumbent licensee's marginal preference)?

The NOI discussed the relicensing process established in ECPA, including the provisions of sections 2, 3, and 4 of ECPA with respect to preference and comprehensive consideration. The NOI also discussed the provisions of section 3 of the Federal Power Act (FPA) [3] with respect to the definitions of a "project" and "project works," and sections 5, 7, and 15 of the FPA [4] and § 4.37 and § 16.13 of the Commission's regulations [5] with respect to preliminary permits and licenses. The NOI then discussed the Court of Appeals' decision in *Kamargo Corp.* v. *Federal Energy Regulatory Commission*, 852 F.2d 1392 (D.C. Cir. 1988), and the Commission's orders in that proceeding.

Against this background, the NOI posed 12 questions on which it invited comments. Six of the questions (nos. 1-5 and 11) pertained to the role of municipal preference, incumbent relicensing preference, preliminary permittee preference, competing preferences, and comprehensive development. Generally, these questions invited comment on which preferences, if any, would pertain in particular situations, how competing preferences should be reconciled, and how to encourage comprehensive development in light of these preferences. Several other questions (nos. 6, 7, and 10) inquired about operational and economic considerations, how to define "incremental capacity," and how to allocate environmental responsibility.

Several questions (nos. 8 and 9) focused on the timing of applications to develop unused incremental capacity, whether to impose a moratorium period on such applications as the existing license approaches expiration, whether to require notification by the existing licensee of its intentions with respect to that capacity, and the consequences of such intentions. Finally, the NOI invited commenters to propose new regulations.

II. Summary of Comments

Comments were filed by nineteen commenters. Seventeen filed initial comments and five filed reply comments. The commenters and their filings are listed in appendix A. We

[1] 56 FR 8164 (Feb. 27, 1991), IV FERC Stats. & Regs. ¶ 35,522.

[2] Public Law 99-495, 100 Stat. 1243 (1986).

[3] 16 U.S.C. 796 (1988).

[4] 16 U.S.C. 798, 800, and 808 (1986).

[5] 18 CFR 4.37 and 16.13.

have carefully considered all of the comments we received.[6]

Many commenters note that the capacity at the site of an existing licensed hydropower project may be perceived differently at relicense than it was when the license was issued. Improvements in technology, for instance, may render a site capable of generating a greater amount of electric power from the same amount of water power. On the other hand, increased sensitivity to environmental concerns, or changed environmental circumstances, may reduce the usable hydropower capacity of the site. These factors might partially or wholly offset each other. These matters need to be considered before determining whether the site contains additional capacity available for development.

Most commenters agree (and none disagree) [7] that Congress, in ECPA, intended to eliminate municipal preference as a basis for transferring existing licensed project facilities from one licensee to another if there are no significant differences between the applicants' competing proposals at relicense. Many commenters characterize this as Congress' prime motivation in enacting ECPA. The commenters differ, however, on the conclusions they draw from this premise with respect to undeveloped capacity at a project site at relicense.

Several commenters [8] contend that Congress intended its preclusion of municipal preference at relicensing to apply only to the existing developed capacity of the site. These commenters contend that the development of previously undeveloped capacity at the site should be treated as "original" licensing, for which Congress preserved the municipal preference. As articulated by Public Power, "(i)ncremental development is not a transfer of an existing right. It is development of a previously undeveloped water resource," [9] such that municipal and preliminary permittee preferences would apply. Puerto Rico contends that ECPA preserved municipal preference for undeveloped incremental capacity as a separate unit of development that is not subject to the existing licensee's marginal preference.[10]

Public Systems contends that there is no conflict between municipal and permittee preference, on the one hand, and the existing licensee's marginal preference, on the other hand, because the undeveloped incremental capacity does not fall within the scope of the relicensing process; thus, there is no marginal preference for this capacity. Colorado contends that the undeveloped incremental capacity is subject to both a preliminary permittee preference and an existing licensee's marginal preference, and that if both preferences are invoked the marginal preference prevails over the permittee preference.

Public Systems also suggests a regulatory scheme whereby incremental capacity could be licensed as original licensing during the term of an existing license, but subject to transfer and compensation at relicensing. Public Systems also proposes a window of opportunity to apply for preliminary permits to develop incremental capacity that interferes with existing licenses, the window to be a period near the expiration of the existing license.[11]

Starting from the same premise that Congress, in ECPA, intended to eliminate municipal preference as a tie-breaking factor at relicensing, that could result in the transfer of facilities, many commenters [12] reach quite different conclusions on the role of preferences with respect to previously undeveloped capacity. Citing sections 10(a) and 15 of the FPA as amended by ECPA, these commenters note that Congress intended the relicense process to be a competitive proceeding to determine which proposal is "best adapted to a comprehensive plan for improving or developing a waterway or waterways." [13]

Discussing the legislative history of ECPA, EEI stresses that ECPA added various factors to consider at relicense, but did not alter or eliminate the best adapted/comprehensive standard in section 10(a)(1) of the FPA. Quoting from that legislative history, NHA stresses Congressional concern with "optimal development" of hydropower sites, while Alabama, Idaho, and the Incumbents stress that the relicense applicant and the Commission have an obligation to consider improvements in facilities, efficiency, and capacity that might better utilize the potential of the waterway. These and other commenters argue that "piecemeal" licensing of different projects at a hydropower site would be inconsistent with the intent of Congress in enacting ECPA because it would undermine the Congressional purpose of fostering comprehensive development and coordinated planning.

From this perspective, these commenters argue that the existing licensee's marginal preference applies to the hydropower site as a coherent entity, and not just to the particular facilities that were previously licensed. PG&E, for instance, contends that the best-adapted approach at a particular site might be to reconstruct or replace the existing facilities, and that Congress could not have intended to discourage such modernization by according the marginal preference solely to the relicensing of the existing obsolete facilities. These commenters argue that according a municipal or preliminary permittee preference to portions of the hydropower capacity at a site at relicensing would be inconsistent with the Congressional purpose of ECPA, because it "would diminish the

[6] Several of the initial comments were filed slightly past the comment deadline, but in a manner that did not delay or disrupt the proceeding or prejudice any other commenter. All comments received were accepted and considered.

[7] Question nos. 1, 2, 3, 4, 5, and 11 of the NOI posed closely related issues that most of the commenters addressed in a comprehensive narrative rather than question by question. Accordingly, the comments in response to these six questions are summarized collectively, in the same manner as the comments themselves.

[8] *E.g.*, Public Power, Public Systems, and Puerto Rico.

[9] Comments of Public Power at 3.

[10] We note at the outset several comments over nomenclature. First, NHA and Public Systems point out that the phrase "marginal preference," with reference to existing licensees' seeking relicense, does not appear in ECPA. Instead, section 15(a) of the FPA, as amended by ECPA, provides that "insignificant differences" in applications shall not result in transfer of a project from the existing licensee to a competing applicant. The phrase "marginal incumbent preference" was used by the Court of Appeals in *Kamargo* (852 F.2d at 1394) as a short convenient characterization of the statutory provisions in section 15(a), and we will also use it in that spirit.

Public Systems prefers the phrase "public preference" instead of "municipal preference," because section 7 of the FPA accords the preference to states as well as municipalities, and municipalities are in any event political subdivisions of states. We agree that the commonly used phrase "municipal preference" encompasses both states and municipalities.

[11] NHA and EEI propose that applications for preliminary permits be required to include sufficient information to disclose whether the applicant's contemplated project would interfere with an existing license project within the meaning of section 6 of the FPA, which precludes such interference, absent consent of the licensee, during the term of the license. Public Systems opposes the proposal. We are not inclined to propose such a regulation. Our experience has been that existing licensees have readily recognized such potential for interference and have readily brought it to our attention in intervening pleadings. To the extent that it is possible for a permittee to design its project in such a manner as to avoid interfering with an existing licensed project, the permit affords the permittee an opportunity to conduct appropriate studies along those lines.

[12] *E.g.*, EEI, NHA, Incumbents, Alabama, Duke, Georgia, Idaho, Long Lake, PG&E, and Portland.

[13] Section 10(a)(1). Section 15(a)(2) provides that any new license be issued to the applicant whose proposal is "best adapted to serve the public interest."

Commission's ability to adopt the plan best suited to comprehensive development of the resource," [14] and would allow municipal preference to "slip through the back door." Duke provides another perspective: [15]

> The rationale for the inescapable conclusion that undeveloped capacity should be the subject of relicensing is that if a licensee fails to propose a comprehensive development at its relicensed project, and a competitor does make such a proposal, the competitor can overcome the marginal incumbent preference. The threat of such an outcome ensures that all incumbent licensees will redevelop their projects fully at relicense or will suffer the consequences. Such an approach fosters "equal consideration" under ECPA.

Some commenters suggest that the scope of the various preferences may depend on the factual context presented. Georgia and New York, for instance, would treat the undeveloped incremental capacity at a site as "new" licensing (relicensing), subject to the existing licensee's marginal preference, if the existing licensee proposes to develop that capacity as part of its relicense application, but would treat it as original licensing (with municipal and permittee preference applying) if the licensee does not propose to develop it. Alabama proposes that any third-party license application to develop incremental capacity that is filed within five years of the expiration of the existing license be treated as a competitive application at relicense, without a permittee preference even if the third party had prepared the application pursuant to a preliminary permit.

As discussed below, various commenters propose requirements whereby the existing licensee would have to file notice of its intent to include the incremental capacity in its relicense application in order for the existing licensee marginal preference to extend to that incremental capacity. Some commenters would impose moratoria on either permit or license applications during some specified period near the expiration of the existing license, while other commenters would allow such applications to be filed but would not accord them municipal or permittee preference.

The NOI invited comment on whether there are any operational or economic efficiencies associated with developing incremental capacity. Some commenters [16] express the view that this determination is best made on a case-by-case basis, on the facts presented. Duke and the Incumbents note that multiple operators may well have differing cost constraints at which they can operate their facilities economically.

A number of commenters [17] identify potential problems and inefficiencies associated with multiple management of hydropower facilities located at the same site. The most serious potential problems mentioned are how to allocate available water resources during periods of lessened flows, how to coordinate operating modes (*e.g.*, baseline or peaking) and electric generation, and how to coordinate responsibilities for safety and environmental protection.

EEI and Colorado suggest that multiple projects at the same site could result in uneconomic duplication of operation and maintenance personnel, and of control and relay, transmission, and interconnection facilities. Idaho suggests that common project works and coordinated electric generation could result in greater economic efficiency. New York comments that "(t)he development of incremental capacity may alter the optimum scheduling of facilities at a unit of development." [18]

Idaho suggests that the management of available water power, particularly during periods of low flows, could be a problem unless the incremental project is subordinated to the existing project. Georgia suggests that multiple project operators could appoint a single licensee as their "agent" for the entire site for the purpose of ensuring environmental protection, public access, and dam safety. Georgia also suggests that integrated dispatch by a single project operator at a site would be more efficient and economic, particularly on the hydro storage projects that are common in its region of the country.

Generally, the commenters do not appear to regard any of the problems or inefficiencies to be insurmountable. On the other hand, none of the commenters appears to suggest any advantages to having multiple operators at the same site other than the advantage of fully developing the available capacity.

The NOI invited the commenters to define "incremental capacity." Idaho suggests that capacity can be defined either in terms of "hydraulic capacity" (input) or "electric capacity" (output), and suggests that hydraulic capacity is more appropriate because it is the overriding constraint on the development of a hydropower site. Other commenters offer the following definitions:

> "Any proposal that would utilize all or any part of the head or flow (whether or not currently utilized) on a reach of river on which a licensed project is located." [19]

> "New capacity possible from the use of additional water flows not utilized by the existing licensee." [20]

> "Any capacity beyond that supported by recorded flows showing the available hydraulic capacity at a given unit." [21]

> "If licensed capacity is being reasonably efficiently utilized, only hydraulic capacity in excess of that specified in the incumbent licensee's license." [22]

> "All flows that can be met beyond the 'full load' of existing units to the extent those flows do not violate existing license provisions." [23]

> "Additional new capacity that can be installed without affecting existing operations or existing use of the streamflow." [24]

The NOI invited comment on whether there should be a deadline by which an existing licensee would be required to notify the Commission of its intent to seek (or not seek) license authority to develop the unused incremental capacity at a unit of development whose license is approaching expiration. The NOI also invited comment on whether the Commission should establish a moratorium period, towards the expiration of an existing license, during which the Commission would decline to consider applications for preliminary permits and original licenses to develop only the incremental capacity of a unit of development. Many commenters responded to these two questions separately, while others discussed the matters of notices and moratoria together, as related facets of a broader issue.

New York proposes a detailed set of deadlines and procedures with respect to notices of intent. Summarized briefly, New York would require an existing licensee to file a notice of its intention to "consider developing" the incremental capacity at a site, the notice to be filed within 90 days of the issuance by the

[14] Comments of Portland at 4.

[15] Comments of Duke at 15.

[16] *E.g.*, NHA, Incumbents, Duke, and Puerto Rico.

[17] EEI, Incumbents, Public Pool, New York, Colorado, Duke, Georgia, Idaho, and Montana.

[18] Comments of New York at 7.

[19] Comments of EEI at 33. EEI suggests this definition in the context of its proposal for a moratorium period.

[20] Comments of Public Systems at 20.

[21] Comments of Puerto Rico at 2.

[22] Comments of New York at 9. New York suggests this definition in the context of a procedural proposal that would provide deadlines by which an existing licensee would have to announce its intentions to develop the incremental capacity, prepare a proposal, and construct the facilities, or lose its existing licensee marginal preference with respect to that capacity.

[23] Comments of Long Lake at 5.

[24] Comments of Georgia at 9.

Commission of notice of an application by a third party for a preliminary permit to develop that capacity. If the existing licensee files such a notice of intent to consider developing incremental capacity, it would then have to flesh out the details of its proposal within three years, or in its relicense application, whichever first occurred. Absent such notice and development of a proposal, the third party would have a valid preliminary permittee preference (if it had sought and obtained a permit) with respect to the incremental capacity, and the existing licensee would "forfeit" its marginal preference with respect to that capacity.

In its reply comments, Niagara opposes New York's proposal, contending that proposals to develop incremental capacity should be considered at relicensing, in a comprehensive proceeding, unencumbered by permittee preference. Niagara objects to any procedures that would enable third parties to accelerate consideration of the incremental capacity outside the context of the relicense proceeding.

In a related proposal, New York recommends that, five years prior to expiration of the existing license, the existing licensee should be required "to declare its intention to evaluate the possibility of developing additional capacity." [25]

Georgia suggests that the existing licensee could be required to indicate its intent to develop (or not develop) the incremental capacity by filing a notice of that intent in response to a third party's application for a preliminary permit to develop that incremental capacity. Idaho would not require such a notice, but suggests that the existing licensee could protect its rights by filing such a notice voluntarily.

Many commenters [26] oppose imposition of a requirement on existing licensees to file a notice of intent to develop incremental capacity, and regard it as unnecessary. Puerto Rico's conclusion is based on its contention that the incremental capacity constitutes a separate unit of development.

Duke and the Incumbents contend that the same notice requirements should apply equally to all participants in the licensing process, and that there is no requirement on third-party applicants to announce their intentions by a prescribed deadline. EEI makes the same point, observing that the Commission, in its rulemaking proceeding on the relicensing regulations, declined to require competitors to file notices of intent.[27]

EEI argues that there is no need to require licensees to file a notice of intent to develop incremental capacity, because, if the existing licensee does not include such capacity in its application for relicense, and if a competing applicant for the project does not include that capacity, the competing applicant may well prevail in taking over the project. EEI points out that ECPA established a procedure in FPA section 15 whereby applications for new licenses for existing projects must be filed no later than two years prior to the expiration of that project's original license, with the competing applicants having a right to file final amendments thereafter.[28] EEI also points out that the purpose of the elaborate consultation process at relicensing is to enable applicants (including existing licensees) to prepare their best proposal (including proposals to develop incremental capacity). Thus, EEI argues that, if an existing licensee applicant is precluded from filing an application (or amendment thereto) for relicense that includes incremental capacity unless it had given prior notice of such intent, the notice requirement would violate the licensee's right of final amendment under ECPA, and would render the pre-filing consultation process meaningless. If the absence of a notice would not have this effect, then the notice requirement would serve no purpose.

Ten commenters [29] advocate establishment of some form of moratorium on either the filing or processing of preliminary permit or license applications for incremental capacity, while four commenters [30] oppose the concept. The moratoria proposed range from two to ten years prior to the expiration of the existing license, and with varying modes of operation.

EEI proposes a ten-year moratorium [31] during which preliminary permit applications would not be accepted and license applications [32] would be deferred for consideration in conjunction with the related relicense applications.[33] EEI bases its selection of ten years on its estimate that preparation of a relicense application, including initial evaluation, planning, and consultation, takes eight to ten years. If license applications for incremental capacity are filed more than ten years prior to the existing license's expiration, EEI would have the application processed to decision, but would have the term of the incremental capacity license expire on the same date that the term of the existing license expires.

NHA prefers a three-year moratorium on permit applications, with no moratorium on license applications. If a license application is filed less than five years prior to expiration of the existing license (the deadline for the existing licensee to file notice of its intent to seek relicense), then NHA would consider such an application contemporaneously with the relicense applications. If a license application is filed more than five years in advance of expiration, NHA advocates considering and reaching a decision on that application prior to considering the relicense applications.

Georgia proposes a six- or seven-year moratorium. During that period, applications could be filed for both permits and licenses, and the existing licensee could be required to respond to such applications by indicating whether it intended to include the incremental capacity in its relicense application. If the existing licensee filed a notice of such intent, then the third-party application would be deferred for consideration in a comprehensive relicensing proceeding. If the existing licensee did not file such a responsive notice of intent, then the incremental capacity license application would be processed as an original licensing proceeding. License applications filed pursuant to preliminary permits would be accorded a preliminary permittee preference against other third-party license applications for the same incremental capacity, but would not be accorded permittee preference vis-a-vis the existing licensee if the existing

[25] Comments of New York at 10.

[26] EEI, NHA, Public Systems, Incumbents, Puerto Rico, Duke, and Idaho.

[27] *See* Hydroelectric Relicensing Regulations Under the Federal Power Act, Order No. 513, FERC Stats. & Regs. (Regulations Preambles) ¶ 30,854 at pp. 31,415–16.

[28] *See* FPA section 15(c)(1), 16 U.S.C. 808(c)(1) (1988).

[29] EEI, NHA, Incumbents, New York, Alabama, Duke, Georgia, Montana, PG&E, and Public Systems.

[30] Puerto Rico, Idaho, Long Lake, and Public Systems. (Public Systems is included in the lists of both proponents and opponents because it substantially opposes the concept but with one exception.)

[31] As discussed herein, all proposed moratoria are measured in terms of years prior to the expiration of the existing project's license.

[32] For purposes of this discussion of proposed moratoria, all references herein to "preliminary permit applications" and "license applications" mean applications to develop only the incremental capacity at the site of an existing licensed project.

[33] EEI would allow the processing of incremental capacity license applications to the extent of correcting deficiencies, but not to the point of substantive analysis and decision.

licensee had filed, in response to the permit application, a notice of intent to develop that incremental capacity as part of its relicense application.

Alabama recommends that any license application filed within five years prior to expiration be treated as part of the relicense process even if the application was prepared pursuant to a preliminary permit issued more than five years prior to that date. Otherwise, Alabama contends, permittee preference for the incremental capacity might enable the permittee to bootstrap itself into taking over the entire project.

New York proposes a five-year moratorium on license applications if the existing licensee has given notice of "its intention to consider development" of the incremental capacity sought. Applications filed more than five years prior to expiration of the existing license would be permitted, but subject to the existing licensee's ability to challenge the application within 90 days (see discussion above of New York's proposed scheme).

PG&E proposed a moratorium period of ten years, based on its own experience in how long it takes to prepare a relicense application, including preliminary studies. PG&E suggests that the time needed can vary, depending on the age of the facilities and the environmental sensitivity of the site. Montana recommends a seven-year moratorium, based on its own experience in preparing applications. Duke and the incumbents recommend a five-year moratorium.

Public Systems recommends a two-year moratorium, but only if the existing licensee has filed a relicense application that includes development of the incremental capacity. Otherwise, Public Systems generally opposes the concept of imposing any specified moratorium, contending that these decisions are best made on a case-by-case basis.

Puerto Rico and Idaho contend that there is no need for a moratorium. Puerto Rico's position is based on its view that the incremental capacity constitutes a separate unit of development. Idaho's position is premised on its view that preliminary permittee preference would not apply if the existing licensee had filed a notice of intent, in response to a preliminary permit application for incremental capacity, that the existing licensee's relicense application would include development of the incremental capacity sought by the permittee.

Long Lake opposes any imposition of either a notice of intent requirement or a moratorium, contending that any such requirement would constitute a "creeping preference" for existing licensees, in violation of the legislative intent of Congress in enacting ECPA.

The NOI also invited comment on how management responsibilities (and costs) for environmental mitigation measures should be allocated among multiple projects operated at the same hydropower site. NHA, EEI, and Public Systems recommend making the allocation on a case-by-case basis, in light of the facts presented. Colorado, Duke, and the Incumbents contend that the question itself illustrates the complexities inherent in splitting units of development and their operation, and that Congress did not intend to divide these responsibilities. They note the difficulty, for instance, in allocating water to different projects at the same site while maintaining minimum flows for environmental (*e.g.*, fishery resource or recreational) purposes, and contend that it highlights the importance of assessing environmental impact at a site in a comprehensive proceeding.

Other commenters propose formulae and factors to consider. New York, for instance, suggests that the cost of the operation and maintenance of joint facilities, including recreational facilities and fish ladders, etc., should be shared in proportion to electrical output. If the joint facilities are owned by one operator, the other should reimburse it in the same manner as headwater benefits are reimbursed. Long Lake recommends that environmental costs be allocated in proportion to the anticipated output of the respective projects.

Georgia suggests that the allocation of environmental costs be based on the level of mitigation required by the development of the incremental capacity. Idaho proposes a series of factors to consider, including the environmental impacts, mitigation measures, and costs for both the existing project and the incremental capacity project, as well as the effect of each project on the other in meeting their respective requirements. Idaho would then allocate to the incremental capacity project the costs of environmental mitigation caused by the development of the incremental capacity, including any increase in costs incurred by the existing licensee, plus a share of the costs common to both projects.

The NOI invited comment on whether the Commission should propose new regulations. Eight commenters [34] favor issuance of new regulations, while another eight commenters [35] oppose such issuance.

NHA proposes adoption of new regulations to define the contents of preliminary permit applications with respect to facts on interference with existing projects, and to provide a moratorium on preliminary permit applications within three years of the expiration of an existing license.[36] EEI proposes regulations to establish a ten-year moratorium period prior to license expiration during which incremental capacity license applications would be deferred and preliminary permit applications would not be accepted.

New York proposes regulations to specify the detailed requirements it suggests on the filing by existing licensees of declarations of intent to develop unused capacity. Idaho proposes regulations clarifying that a preliminary permit won't be issued to a third party for development of incremental capacity if the existing licensee has filed, in the permit proceeding, a notice of intent to include development of that capacity in its relicense application. Alabama proposes regulations to define incremental capacity, to establish a deadline for existing licensees to give notice of their intent to develop incremental capacity, and to establish a five-year moratorium on processing third-party applications to develop incremental capacity.

Puerto Rico proposes that the regulations be revised to provide a more precise definition of "unit of development," but does not propose a specific definition. Colorado believes that new regulations would expedite the licensing and relicensing processes by clarifying the preference issues, and Portland also favors new regulations, but neither proposes specific provisions.

Commenters opposing new regulations give a variety of reasons. They contend that the requirements of ECPA are clear, that the present regulations are adequate, that new regulations are unnecessary and could disrupt on-going relicense processes, that the Commission's hydropower regulations are already complicated and should not be further expanded, and that the issues posed by the NOI are fact-specific, such that they are better resolved through case-by-case determinations than by generic rules. Public Systems prefers Commission

[34] EEI, NHA, New York, Puerto Rico, Alabama, Colorado, Idaho, and Portland. EEI submitted draft regulatory text.

[35] Public Power, Public Pool, Public Systems, Incumbents, Duke, Georgia, Washington, and Long Lake.

[36] NHA's third proposal, not discussed herein, is beyond the scope of the NOI.

issuance of a policy statement or guidelines rather than new regulations. Public Pool "believes that trying to create a one-size-fits-all rule out of the factual context of these cases would be a serious mistake," and that "(i)t would saddle the Commission with an inflexible, maybe even unworkable, set of requirements for application in very different sets of circumstances."

Finally, several of the commenters suggest that the issues raised in the NOI are, in effect, a tail that should not be permitted to wag the dog. NHA, for instance, comments that "(t)he complexity of the issues is surpassed only by the infrequency with which they arise." [37] Duke and the Incumbents suggest that "(t)he existence of a small class of very troublesome cases, like those presented in the NOI, does not provide the justification for creating new regulations that will unduly complicate not only every licensing and relicensing, but the day-to-day operations of every hydro project as well." [38]

III. Statement of Policy

The comments have been very helpful to us in clarifying the issues, and in putting them into their proper prospective in the broader context of the relicensing process. In light of our own experience to date, we are persuaded by the commenters that the issues that arose in the *Kamargo* proceeding are unlikely to arise in a broad spectrum of relicensing proceedings, and are better addressed on a case-by-case basis when they arise rather than by generic rule. Thus, we have determined not to propose any new regulations at this time.

Despite the diversity of opinion expressed in the comments, we perceive several common central principles upon which most of the commenters seem to agree. We set these forth below as a statement of policy on how we currently intend to proceed in the processing of permit and license applications for incremental capacity. These principles are broadly stated, and are intended as an overall framework. The precise scope and implementation of these principles will be determined on a case-by-case basis in the context of the facts presented by the applications that come before us, and may be refined or modified based on our experience in implementing them.

1. If within a reasonably contemporaneous time period the Commission has (or reasonably expects to have) before it for consideration: (a) An application for relicense of existing facilities; [39] and (b) an application for a license for incremental capacity at the same site; [40] then the Commission will consider the applications in a comparative proceeding.[41] This will enable the Commission to consider the widest range of potential alternative uses for the site, including comprehensive reconstruction or replacement of facilities that would be best adapted to the site as a whole.

We prefer at this juncture not to define "contemporaneous" by a rigid rule. We note, however, that applications for license authority require a number of years to prepare and process, including long lead time for planning and consultation. Thus, in the context of the processing of hydropower applications, contemporaneity is necessarily measured in terms of a period of years and must necessarily include anticipated applications for relicense as well as applications already on file. This does not require a moratorium precluding the filing of applications, but may well entail deferral of consideration of such applications pending comparative and comprehensive review at relicensing. The appropriate length of such a deferral period may well vary, depending on the size, nature, and age of the existing or potential project works at the site, and safety or environmental concerns peculiar to that site. We believe that these factors ought to be considered on a case-by-case basis.

2. In the comparative proceeding, the Commission will determine the total usable capacity of the site in light of modern technology and contemporary environmental considerations. We recognize that this analysis may result in a determination of either greater capacity (due, *e.g.*, to technological improvements) or less capacity (due, *e.g.*, to contemporary environmental considerations) than was previously licensed. We believe that licenses at relicensing should be based on a current comprehensive analysis of the entire site.

3. In the comparative proceeding, the Commission will ascertain whether any applicant (either the existing licensee or a third party competitor, or both) has applied for a license that would develop all of the available capacity at a site,[42] and if the project(s) proposed in such application(s) would be economically viable. Pursuant to the statutory standards of "comprehensive development" and "best adapted," an economically viable proposal by a third party who proposes to develop all of the available capacity at the site [43] may well prevail over the existing licensee's marginal preference for relicensing of the existing facilities; if the third party's full capacity proposal is significantly different from the superior to the existing licensee's proposal, no tie will occur, and there will be no occasion to consider the existing licensee's marginal preference. Municipal preference and permittee preference will not apply in this situation, which would constitute "new" licensing rather than "original" licensing.

4. If the existing licensee has applied for a new license (either to operate the existing project without change or for a project that develops more or all of the available capacity at the site), the existing licensee's marginal preference would pertain, and a third-party competitor would not have either a permittee or municipal preference vis-a-vis the existing licensee. Thus, in the event that there were no significant differences between the existing licensee's proposal and the third-party applicant's proposal, the "tie" would be resolved by the existing licensee's marginal preference. For example, the existing licensee's marginal preference *will* apply, and the third-party's municipal or permittee preference will *not* apply, in: (a) A contest in which the existing licensee and the third party both propose to operate the existing project without change; and (b) A contest in which the existing licensee and the third party both propose to develop all of the available capacity at the site (*i.e.*, the existing capacity plus

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[37] Comments of NHA at 4.

[38] Comments of Duke at 29; comments of Incumbents at 22 (the quote is identical in both comments). In this regard, we note that all of the cases in which the *Kamargo*-type issues have arisen involve hydropower sites in only one state.

[39] The application could also be for expansion, improvement or replacement of existing facilities.

[40] The NOI focused on the "unit of development" concept embedded in section 3 of the FPA. Most of the commenters framed their comments in terms of hydroelectric facilities at a "site" rather than at a unit of development, and we have adopted this terminology for our discussion herein. What constitutes the parameters of a "site" is an inherently fact-bound determination that will be made on a case-by-case basis.

[41] There are also other situations (not relevant to the issues discussed in this NOI proceeding) in which the Commission will consider license applications in a comparative proceeding.

[42] As used in this discussion, the phrase "all of the available capacity at the site" means all of the capacity at the site that can be developed for hydropower purposes consistent with appropriate environmental mitigation and applicable standards of comprehensive development and best adapted use of the water resources at the site

[43] *Id.*

the incremental capacity) as improved versions of the existing project.[44]

5. If no applicant has applied for a license that would utilize all of the available capacity at the site, and if the existing licensee has applied for relicense of the existing facilities, and if a third party has applied for a license to develop the incremental capacity and the two proposed projects can be operated compatibly with each other,[45] then both licenses could be issued.[46] Under these circumstances, the license for the existing facilities would be a "new" license (relicense), and the license to develop the incremental capacity would be an "original" license. If more than one applicant seeks a license to develop the incremental capacity (and for *only* the incremental capacity), permittee preference and municipal preference would apply. If a third-party applicant seeks to take over the existing facilities, and *only* the existing facilities, the existing licensee would have a marginal preference, and there would be no permittee or municipal preference for these facilities.[47]

Our determinations above are based on our understanding of the fundamental thrust of the FPA as amended by ECPA. Section 15(a)(2) of the FPA [48] provides that "(a)ny new license issued under this section shall be issued to the applicant having the final proposal which the Commission determines is best adapted to serve the public interest * * *." [49] Section 10(a)(1) of the FPA requires that "the project adopted * * * shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways * * *." [50]

Sections 4(e) and 10(a) of the FPA,[51] as amended by section 3 of ECPA, enumerate a broad range of factors that the Commission must consider, including protection, mitigation of damage to, and enhancement of, fish and wildlife resources; energy conservation; protection of recreational opportunities; and irrigation, flood control and water supply; as well as development of water power. The clear thrust and purpose of these statutory provisions is that Congress intended that the Commission, at relicensing, take a close, hard look—a "comprehensive" look—at the hydroelectric project site, and determine which project or projects would be most appropriate for that site in light of all of the relevant considerations.

In section 2 of ECPA, Congress amended section 7(a) of the FPA [52] in such a manner as to make the preference for states and municipalities inapplicable to the issuance of new licenses in the relicensing of existing projects. In section 4 of ECPA, Congress amended section 15 of the FPA to ensure that, in the relicensing process, "insignificant differences" between applications "are not determinative and shall not result in the transfer of a project." As discussed above, this provision has been judicially characterized as establishing a "marginal preference" for the incumbent licensee seeking relicense of an existing project.

To be sure, Congress did not focus explicitly on the appropriate treatment of unused available capacity at an existing site, but the clear thrust of the legislation is that the Commission take its close, hard look at the site as a comprehensive entity. There is no indication that Congress intended the existing licensee's marginal preference to relicensing, or the restriction on municipal preference at relicensing, to apply to anything less than the full site of the project whose relicense is at issue. We do not believe, for instance, that Congress intended the existing licensee's marginal preference to apply solely to the existing facilities, however outmoded or inefficient they might be, but not to apply to proposed improvements or replacements of those facilities, including more modern or efficient project works that would develop unused capacity or better protect the environment. Nor do we believe that Congress intended to accord a municipal or permittee preference to proposals that would improve some isolated portion of the project site at a potential cost of frustrating the comprehensive redevelopment of the site at relicensing.[53]

Accordingly, we conclude that Congress intended the "best adapted" and "comprehensive plan" standards to apply to the site as a comprehensive unit at relicensing, and did not intend to accord municipal or permittee preference to applications to develop any particular portion of the site. It follows from this that all reasonably contemporaneous applications to develop or operate hydroelectric facilities at the site must be considered jointly, in a comprehensive proceeding at relicensing that includes a determination of the actual capacity of the site in light of modern technology and current understanding and sensitivity to environmental values. Within that context we can evaluate the proposals to operate existing facilities or

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[44] We also note the possibility of a contest in which the existing licensee proposes to operate the existing project, and the third party proposes to develop all of the available capacity (existing plus incremental) as an improved version of the existing project, under circumstances in which the choice between the two proposals is very close. For instance, there could be a choice between a proposed project that would generate more power and a proposed project that would better protect the environment. Under those circumstances, there would clearly be significant differences between the two proposals, such that the "marginal preference" described by the Court of Appeals as arising out of ECPA would not pertain. The Commission would reach its determination based on the merits of the facts presented. In any event, third-party municipal or permittee preference would not apply, because the choice would be made in a comparative proceeding at relicensing.

[45] Section 6 of the FPA doesn't apply to this situation because the original license has expired. The test, therefore, is comprehensive development of the available water resources, not physical interference with existing facilities.

[46] In that situation, the Commission's practice has been to issue the two licenses at the site for the same term, to expire simultaneously. In the future the Commission will consider such circumstances on a case-by-case basis.

[47] We also recognize the possibility of a contest in which the existing licensee proposes to operate the existing project, and the third party proposes to develop only the unused capacity, but under circumstances in which the two proposed projects cannot be operated compatibly at the same site. In that event, the Commission would select the existing licensee's proposal for relicensing of its existing project. There would be no municipal or permittee preference because the choice would be made in a comparative proceeding at relicensing.

[48] 16 U.S.C. 808(a)(2) (1988).

[49] 16 U.S.C. 808(a)(2) (1988).

[50] 16 U.S.C. 803(a)(1) (1988). In its entirety, it reads as follows:

(a)(1) That the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e). If necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

[51] 16 U.S.C. 797(e) and 800(a) (1988).

[52] 16 U.S.C. 800(a) (1988).

[53] In this regard, we agree with NHA (comments at 13–14) that Montana Power Co. v. Federal Power Commission, 298 F.2d 335 (D.C. Cir. 1962), does not require that proposals to develop unused capacity at a site be treated as original licensing. That case involved a determination of headwater benefits, and predated the enactment of ECPA. The court construed the FPA as authorizing separate licensing (as opposed to amending the extant license) of additional project works at a unit of development. The court's reasoning, however, does not preclude the comprehensive analysis at relicensing that is mandated by ECPA, nor does it preclude licensing of the best adapted proposal(s) that emerge in the relicensing process.

to develop new facilities, and select the best adapted proposal(s).[54]

We regard the matter of a moratorium on applications to be a very close question. On balance, we have concluded that our purposes can best be achieved on a case-by-case basis. If a third party files an application (for either a preliminary permit or a license) to develop unused capacity at the site of an existing licensed project, the licensee can file a motion to intervene stating its reasons why the application should be considered in a comprehensive proceeding at relicensing. We can then consider the matter on the facts presented.

If an application for a license is for unused incremental capacity, and if it is filed at a time when an existing license for a project at the same site is approaching expiration, the Commission will determine on a case-by-case basis whether to defer consideration of the application to a comparative proceeding at relicense. If deferring the license application would result in that application becoming stale or obsolete, we may dismiss the application without prejudice to refiling it in the relicense proceeding.

In light of our determinations above on permittee preference, we will not impose a moratorium on preliminary permit applications. The permit would afford the permittee a tie-breaking preference over other third-party applicants for the incremental capacity, but not against any comprehensive proposals (either by the existing licensee or by a third party applicant) at relicensing to develop all of the capacity at the site.[55] If permit applicants are willing to incur the risks inherent in this framework, it does not appear necessary to preclude them from obtaining a permit and developing an application for a license.

As long as related license applications are considered together in comprehensive proceedings at relicense, and as long as preferences are accorded only in situations where such preferences are appropriate, we perceive no harm to existing licensees in allowing third-party incremental capacity applicants to file an application for a license, and to both file for and receive a preliminary permit. These filings put the existing licensee on notice of the third party's intentions, and may thereby assist the existing licensee in preparing its relicense application. These filing would also serve to alert the Commission as to the views of various interested persons as to the potential capacity at the site.

By the Commission.

Lois D. Cashell,

Secretary.

Appendix A

List of Commenters

1. Alabama Power Company (Alabama).
2. American Public Power Association (Public Power).
3. Duke Power Company (Duke).
4. Edison Electric Institute (EEI).
5. Georgia Power Company (Georgia).
6. Idaho Power Company.
7. Incumbent Licensee Group (Incumbents).[56]
8. Long Lake Energy Corporation (Long Lake).
9. Montana Power Company (Montana).
10. National Hydropower Association (NHA).
11. Niagara Mohawk Power Corporation (Niagara).
12. Pacific Gas and Electric Company (PG&E).
13. Portland General Electric Company (Portland).
14. Public Generating Pool (Public Pool).
15. Public Service Company of Colorado (Colorado).
16. Public Systems.[57]
17. Puerto Rico Electric Power Authority (Puerto Rico).
18. State of New York Department of Public Service (New York).
19. Washington Water Power (Washington).

Reply comments were filed by EEI, Niagara, Public Systems, Public Pool, and Georgia. All of the commenters listed above filed initial comments except Niagara Mohawk and Public Pool.

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[54] As described herein, there will be a sequence of inquiries in the Commission's analysis of the proposals, but these steps are intended to culminate in a single order.

[55] The preliminary permit, when issued, would contain appropriate conditions defining the scope of the preference accorded therein, and whether that determination is deferred to a subsequent proceeding.

[56] Incumbents is comprised of Georgia Pacific Corporation, Lockhart Power Company, Milliken and Company, Elkem Metals Company, Topoco, Inc., and Yadkin, Inc.

[57] Public Systems is comprised of the Northern California Power Agency; the Electric Department of Burlington, Vermont; the Holyoke, Massachusetts Gas & Electric Department; and the Cities of Azusa, Colton and Riverside, California.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8389]

RIN 1545–AP72

Taxation of Fringe Benefits and Exclusions From Gross Income of Certain Fringe Benefits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final amendments of two provisions of the fringe benefit regulations concerning the taxation and valuation of fringe benefits and exclusion from gross income for certain fringe benefits. The final amendments affect any person providing or receiving these fringe benefits and provide these persons with the guidance necessary to comply with the law.

EFFECTIVE DATE: The final amendments to the fringe benefit regulations are effective July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Marianna Dyson at 202–377–9372 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 20, 1991, a notice of proposed rulemaking was published in the **Federal Register** (56 FR 23038). The notice contains proposed amendments to the fringe benefit regulations under sections 61 and 132 of the Internal Revenue Code of 1986 (Code). These proposed amendments provide guidance on the tax treatment of certain transportation provided by an employer to or from an employee's workplace due to unsafe conditions surrounding the employee's workplace or residence and increase the dollar amount of the de minimis exclusion for public transit passes provided to employees for commuting on public transit systems.

Comments were received from the public, and on July 1, 1991, the Internal Revenue Service held a public hearing concerning the proposed amendments. In response to the comments received and the statements made at the public hearing, the proposed amendments have been adopted as revised by this Treasury decision.

The amendments to the final regulations contained in this document apply as of July 1, 1991. The amendments to the final regulations under section 61 are contained in § 1.61–21. The amendments to the final regulations under section 132 are contained in § 1.132–6.

Summary of Comments and Explanation of Provisions

1. Interaction of Employer-Provided Transportation Due to Unsafe Conditions Rule and Existing De Minimis Transportation Fare Rules

Numerous commentators requested clarification of the interaction between the new commuting valuation rule and the two employer-provided

transportation fare rules contained in the de minimis fringe benefit regulations under section 132(e) of the Code. Under the first de minimis fringe rule, § 1.132–6(d)(2)(i), the value of local transportation fare is totally excludable from gross income as a de minimis fringe for any employee (regardless of income), if the benefit is reasonable and is provided on an occasional basis because overtime requires an extension of the employee's normal work schedule.

The second de minimis fringe rule, which is contained in § 1.132–6(d)(2)(iii), provides only a partial de minimis exclusion for local transportation furnished to employees for use in commuting to and from work because of unusual circumstances. This exclusion is available only to "noncontrol" employees who are provided local transportation because it is unsafe to use other available means of transportation. The determination of unusual circumstances is made with respect to the employee receiving the transportation and is based on the facts and circumstances. For example, situations in which an employee is asked to work outside his normal work hours or to make a temporary shift change are considered unusual. Factors indicating unsafe conditions are the history of crime in the geographic area surrounding the employee's workplace or residence and the time of day during which the employee must commute. If unusual circumstances and unsafe conditions exist and the employer transports the employee between work and home, the excess of the value of each one-way commute over $1.50 is excludable from the employee's gross income, provided the employee is not a control employee. For 1991, the definition of control employee under § 1.61–21(f)(5) includes officers, directors, one-percent owners, or any employees earning $121,070 or more. For government employees, the definition of control employee under § 1.61–21(f)(6) covers any elected official or any employee earning $101,300 or more.

Unlike the rules of exclusion set forth in § 1.132–6(d)(2) (i) and (iii), the special valuation rule of § 1.61–21(k) does not have an overtime or unusual circumstances work requirement. The new rule applies to situations in which local transportation fare is provided to qualified employees who, under appropriate circumstances, are receiving the benefit, even though their regular working hours have not been extended or changed. The most typical example is the qualified night shift worker who does not work overtime, but is provided transportation to work each evening because of unsafe conditions. The special valuation rule applies if an employee is a "nonexempt" employee subject to the Fair Labor Standards Act of 1938 (as amended), 29 U.S.C. 210–219 (FLSA), earns less than $60,535 in 1991, and receives local transportation to or from work because of security concerns (i.e., at the time of day the employee would ordinarily walk or use public transportation, these forms of commuting would be considered unsafe by a reasonable person). If the rule applies, the excess of the value of each one-way commute over $1.50 is excludable from the employee's gross income.

The absence of an overtime or unusual circumstances work requirement does not mean that the rule is available only to employees who receive the benefit before or after their regular work shifts. The rule may also be used to value transportation provided to employees who work overtime, provided that they otherwise meet the requirements of the regulation. For example, a day-shift employee may frequently work overtime into the evening hours, at which time the employee's usual means of commuting between work and home (i.e., walking or using public transportation) would be considered unsafe. If transportation home is furnished to the employee on more than an occasional basis, the transportation would not be excludable under § 1.132–6(d)(2)(i) as a de minimis fringe. Similarly, if the transportation is provided under circumstances that do not qualify as unusual, the value of the benefits in excess of $1.50 per one-way commute would not be excludable under § 1.132–6(d)(2)(iii). With the implementation of the new rule, the transportation home may be valued at $1.50 per trip, provided the day-shift employee is qualified within the meaning of § 1.61–21(k) and unsafe conditions exist.

Alternative Transportation: Walking or Using Public Transportation

Commentators suggested that the new commuting valuation rule should be expanded to include transportation or transportation fare provided to employees other than those who would otherwise walk or use public transportation to commute to and from work.

The purpose of the new rule is to assist lower-paid non-professionals who would ordinarily walk or use public transportation when commuting, but are unable to do so because of unsafe conditions at the time of day they must commute. Therefore, the rule in the final regulations has not been expanded to cover employees who have other modes of transportation available to them.

It was also suggested that guidance should be given as to how or whether employers should investigate or substantiate the employee's alternative mode of commuting to and from work. In the interest of avoiding unnecessary complexity, the final regulations do not offer additional guidelines, but rely instead on employers' ability to make proper determinations through existing personnel management procedures. To alleviate employer concerns that absolute certainty is required on a day-by-day basis when determining alternative mode of transportation available to the employee, the final regulations provide that the valuation rule is available to employees who would ordinarily walk or use public transportation.

Definition of Employer-Provided Transportation

Several commentators questioned whether the definition of "employer-provided transportation" includes cash reimbursements for transportation paid directly by employees or whether the definition is limited to transportation provided by the employer pursuant to an agreement with an independent taxi or car service company. The most typical example of a cash reimbursement involves the small employer that does not have an account with a car service company, but reimburses qualified employees for cab rides. To address this concern, the final regulations provide that cash reimbursements made by an employer to an employee to cover the cost of purchasing transportation from an unrelated third party (i.e., hiring a cab) will be treated as employer-provided transportation, provided the reimbursement is made under a bona fide reimbursement arrangement.

In addition, commentators inquired as to whether the definition of "employer-provided transportation" includes transportation in an employer-owned or leased vehicle. The requirement that the transportation be purchased from a party that is not related to the employer has not been expanded in the final regulations because the regulations under section 61 of the Code already provide special valuation rules for commuting in employer-provided vehicles. For example, employers desiring to use employer-owned or leased automobiles may rely on the rules relating to employer-provided van-pools and vehicles covered by written "commuting-only" policies. See § 1.61–21(f).

Hourly, Nonexempt Employees

Many commentators requested clarification of the requirement that employees must be "paid on an hourly basis" in order to be qualified. The final regulations provide that if an employee's compensation is stated on an annual basis, the employee may nonetheless be treated as "paid on an hourly basis," provided the employee is not claimed to be exempt from the minimum wage and maximum hour provisions of the FLSA and is paid overtime wages either equal to or exceeding one-and-a-half times the employee's regular hourly rate of pay.

Definition of Compensation

In the interest of consistency, the final regulations modify the proposed regulations to provide that the definition of "compensation" under the new valuation rule is the same as the definition of "compensation" used for purposes of applying the commuting valuation rule of § 1.61–21(f) and the partial de minimis exclusion of § 1.132–6(d)(2)(iii). Thus, an employer relying on any of these three rules must determine compensation in the same manner for all employees.

2. Public Transit Passes

Dollar Increase From $15 to $21

Numerous comments were received that increasing the de minimis exclusion for public transit passes from $15 to $21 was not sufficient to promote use of public transportation. The $15 de minimis exclusion for public transit passes arises out of the legislative history accompanying the Tax Reform Act of 1984, Public Law No. 98–369, section 531, 98 Stat. 494, which added section 132(e) to the Code. Under section 132(e), property or services not otherwise tax-free are excluded from gross income if (after taking into account the frequency with which they are provided) the value of the benefits is so small that accounting for the property or service would be unreasonable or administratively impracticable. The legislative history to the Act specifically lists monthly transit passes provided at a discount not exceeding $15 as an example of a de minimis fringe benefit. H.R. Rep. No. 861, 98th Cong., 2d Sess. 1168 (1984), 1984–3 (Vol. 2) C.B. 422. Increasing the $15 de minimis exclusion for transit passes to $21 to reflect the cost of living furthers the Congressional purpose underlying the directive in the legislative history concerning public transit passes. Thus, the cost-of-living adjustment for public transit passes should not be read as an expansion of the limits otherwise set forth in § 1.132–6 with respect to value or frequency of de minimis fringes.

Reimbursements for Public Transit Commuting Expenses

The final regulations provide that reimbursements made by an employer to an employee after December 31, 1988, to cover the cost of commuting on a public transit system are excludable as de minimis fringes under section 132(e) provided that the employee does not receive more than $21 ($15 for months ending before July 1, 1991) in such reimbursements with respect to commuting costs paid in any given mouth. Under this provision, the reimbursements must be made under a bona fide reimbursement arrangement. In lieu of requiring substantiation each time an employee incurs an expense for commuting on a public transit system, a reimbursement arrangement will be treated as bona fide if the employer establishes appropriate procedures for periodically verifying that the employee's use of public transportation for commuting is consistent with the value of the benefit provided by the employer for that purpose.

The provision allowing for cash reimbursements comports with the legislative clarification in the Senate Finance Committee Report to the Tax Reform Act of 1986, S. Rep. No. 313, 99th Cong., 2d Sess. 1026 (1986). Specifically, the report indicates that the de minimis fringe exclusion includes tokens, vouchers, and reimbursements to cover the costs of commuting by public transit, as long as the amount provided by the employer does not exceed $15 a month ($180 a year). The report also provides that the value of all such transit benefits (including any discounts on passes) furnished to the same individual are aggregated for purposes of determining whether the $15 limit is exceeded. The clarification applies to reimbursements paid after December 31, 1988.

Special Analysis

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. 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, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Marianna Dyson, Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.61–1 Through 1.133–1T

Income taxes, Reporting and recordkeeping requirements.

Adoption of the Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended in part by removing the first authority citation for § 1.61–2T et al and by adding the following new citations in numerical order to read as follows:

Authority: Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * * Sec. 1.61–2T also issued under 26 U.S.C. 61; Sec. 1.61–21 also issued under 26 U.S.C. 61 * * * Sections 1.132–0 through 1.132–8T also issued under 26 U.S.C. 132 * * *

Par. 2. Section 1.61–21(k) is added to read as follows:

§ 1.61–21 Taxation of fringe benefits.

* * * * *

(k) *Commuting valuation rule for certain employees*—(1) *In general.* Under the rule of this paragraph (k), the value of the commuting use of employer-provided transportation may be determined under paragraph (k)(3) of this section if the following criteria are met by the employer and employee with respect to the transportation:

(i) The transportation is provided, solely because of unsafe conditions, to an employee who would ordinarily walk or use public transportation for commuting to or from work;

(ii) The employer has established a written policy (e.g., in the employer's personnel manual) under which the transportation is not provided for the employee's personal purposes other than for commuting due to unsafe conditions and the employer's practice in fact corresponds with the policy;

(iii) The transportation is not used for personal purposes other than commuting due to unsafe conditions; and

(iv) The employee receiving the employer-provided transportation is a qualified employee of the employer (as

defined in paragraph (k)(6) of this section).

(2) *Trip-by-trip basis.* The special valuation rule of this paragraph (k) applies on a trip-by-trip basis. If an employer and employee fail to meet the criteria of paragraph (k)(1) of this section with respect to any trip, the value of the transportation for that trip is not determined under paragraph (k)(3) of this section and the amount includible in the employee's income is determined by reference to the fair market value of the transportation.

(3) *Commuting value*—(i) *$1.50 per one-way commute.* If the requirements of this paragraph (k) are satisfied, the value of the commuting use of the employer-provided transportation is $1.50 per one-way commute (i.e., from home to work or from work to home).

(ii) *Value per employee.* If transportation is provided to more than one qualified employee at the same time, the amount includible in the income of each employee is $1.50 per one-way commute.

(4) *Definition of employer-provided transportation.* For purposes of this paragraph (k), "employer-provided transportation" means transportation by vehicle (as defined in paragraph (f)(4) of this section) that is purchased by the employer (or that is purchased by the employee and reimbursed by the employer) from a party that is not related to the employer for the purpose of transporting a qualified employee to or from work. Reimbursements made by an employer to an employee to cover the cost of purchasing transportation (e.g., hiring cabs) must be made under a bona fide reimbursement arrangement.

(5) *Unsafe conditions.* Unsafe conditions exist if a reasonable person would, under the facts and circumstances, consider it unsafe for the employee to walk to or from home, or to walk to or use public transportation at the time of day the employee must commute. One of the factors indicating whether it is unsafe is the history of crime in the geographic area surrounding the employee's workplace or residence at the time of day the employee must commute.

(6) *Qualified employee defined*—(i) *In general.* For purposes of this paragraph (k), a qualified employee is one who meets the following requirements with respect to the employer:

(A) The employee performs services during the current year, is paid on an hourly basis, is not claimed under section 213(a)(1) of the Fair Labor Standards Act of 1938 (as amended), 29 U.S.C. 201–219 (FLSA), to be exempt from the minimum wage and maximum hour provisions of the FLSA, and is within a classification with respect to which the employer actually pays, or has specified in writing that it will pay, compensation for overtime equal to or exceeding one and one-half times the regular rate as provided by section 207 of the FLSA; and

(B) The employee does not receive compensation from the employer in excess of the amount permitted by section 414(q)(1)(C) of the Code.

(ii) *"Compensation" and "paid on an hourly basis" defined.* For purposes of this paragraph (k), "compensation" has the same meaning as in section 414(q)(7). Compensation includes all amounts received from all entities treated as a single employer under section 414 (b), (c), (m), or (o). Levels of compensation shall be adjusted at the same time and in the same manner as provided in section 415(d). If an employee's compensation is stated on an annual basis, the employee is treated as "paid on an hourly basis" for purposes of this paragraph (k) as long as the employee is not claimed to be exempt from the minimum wage and maximum hour provisions of the FLSA and is paid overtime wages either equal to or exceeding one and one-half the employee's regular hourly rate of pay.

(iii) *FLSA compliance required.* An employee will not be considered a qualified employee for purposes of this paragraph (k), unless the employer is in compliance with the recordkeeping requirements concerning that employee's wages, hours, and other conditions and practices of employment as provided in section 211(c) of the FLSA and 29 CFR part 516.

(iv) *Issues arising under the FLSA.* If questions arise concerning an employee's classification under the FLSA, the pronouncements and rulings of the Administrator of the Wage and Hour Division, Department of Labor are determinative.

(v) *Non-qualified employees.* If an employee is not a qualified employee within the meaning of this paragraph (k)(6), no portion of the value of the commuting use of employer-provided transportation is excluded under this paragraph (k).

(7) *Examples.* This paragraph (k) is illustrated by the following examples:

Example 1. A and B are word-processing clerks employed by Y, an accounting firm in a large metropolitan area, and both are qualified employees under paragraph (k)(6) of this section. The normal working hours for A and B are from 11:00 p.m. until 7:00 a.m. and public transportation, the only means of transportation available to A or B, would be considered unsafe by a reasonable person at the time they are required to commute from home to work. In response, Y hires a car service to pick up A and B at their homes each evening for purposes of transporting them to work. The amount includible in the income of both A and B is $1.50 for the one-way commute from home to work.

Example 2. Assume the same facts as in *Example 1*, except that Y also hires a car service to return A and B to their homes each morning at the conclusion of their shifts and public transportation would not be considered unsafe by a reasonable person at the time of day A and B commute to their homes. The value of the commute from work to home is includible in the income of both A and B by reference to fair market value since unsafe conditions do not exist for that trip.

Example 3. C is an associate for Z, a law firm in a metropolitan area. The normal working hours for C's law firm are from 9 a.m. until 6 p.m., but C's ordinary office hours are from 10 a.m. until 8 p.m. Public transportation, the only means of transportation available to C at the time C commutes from work to home during the evening, would be considered unsafe by a reasonable person. In response, Z hires a car service to take C home each evening. C does not receive annual compensation from Z in excess of the amount permitted by section 414(q)(1)(C) of the Code. However, C is treated as an employee exempt from the provisions of the FLSA and, accordingly, is not paid overtime wages. Therefore, C is not a qualified employee within the meaning of paragraph (k)(6) of this section. The value of the commute from work to home is includible in C's income by reference to fair market value.

(8) *Effective date.* This paragraph (k) applies to employer-provided transportation provided to a qualified employee on or after July 1, 1991.

Par. 3. Section 1.132–6 is amended as follows:

1. Paragraph (d)(1) is revised.

2. The second sentence of paragraph (d)(3) is revised.

3. The last sentence of paragraph (d)(4) is revised.

4. The revisions read as follows:

§ 1.132–6 De minimis fringes.

* * * * *

(d) * * *

(1) *Transit Passes.* A public transit pass provided at a discount to defray an employee's commuting costs may be excluded from the employee's gross income as a de minimis fringe if such discount does not exceed $21 in any month. The exclusion provided in this paragraph (d)(1) also applies to the provision of tokens or fare cards that enable an individual to travel on the public transit system if the value of such tokens and fare cards in any month does not exceed by more than $21 the amount the employee paid for the tokens and fare cards for such month. Similarly, the exclusion of this paragraph (d)(1) applies to the provision of a voucher or

similar instruments that is exchangeable solely for tokens, fare cards, or other instruments that enable the employee to use the public transit system if the value of such vouchers and other instruments in any month does not exceed $21. The exclusion of this paragraph (d)(1) also applies to reimbursements made by an employer to an employee after December 31, 1988, to cover the cost of commuting on a public transit system, provided the employee does not receive more than $21 in such reimbursements for commuting costs in any given month. The reimbursement must be made under a bona fide reimbursement arrangement. A reimbursement arrangement will be treated as bona fide if the employer establishes appropriate procedures for verifying on a periodic basis that the employee's use of public transportation for commuting is consistent with the value of the benefit provided by the employer for that purpose. The amount of in-kind public transit commuting benefits and reimbursements provided during any month that are excludible under this paragraph (d)(1) is limited to $21. For months ending before July 1, 1991, the amount is $15 per month. The exclusion provided in this paragraph (d)(1) does not apply to the provision of any benefit to defray public transit expenses incurred for personal travel other than commuting.

* * * * *

(3) * * * For example, the fact that $252 (i.e., $21 per month for 12 months) worth of public transit passes can be excluded from gross income as a de minimis fringe in 1992 does not mean that any fringe benefit with a value equal to or less than $252 may be excluded as a de minimis fringe. * * *

(4) * * * For example, if, in 1992, an employer provides a $50 monthly public transit pass, the entire $50 must be included in income, not just the excess value over $21.

* * * * *

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Approved: December 18, 1991.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 92-1116 Filed 1-15-92; 8:45 am]
BILLING CODE 4830-01-M

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule; amendments.

SUMMARY: In support of the implementation of the recently-signed Comprehensive Political Settlement of the Cambodia Conflict, the Treasury Department is lifting prospectively the trade embargo against Cambodia and authorizing new financial and other transactions with Cambodian nationals, the Supreme National Council of Cambodia, its agencies, instrumentalities, and controlled entities, and successor Cambodian governments. This final rule does not unblock the assets within U.S. jurisdiction of the Government of Cambodia or Cambodian nationals blocked as of January 2, 1992, nor does it affect enforcement actions with respect to prior violations of the embargo.

EFFECTIVE DATE: 12:01 a.m. Eastern Standard Time, January 3, 1992.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel (tel.: 202/535-6020), or Steven I Pinter, Chief of Licensing (tel.: 202/535-9449), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION CONTACT: The Office of Foreign Assets Control ("FAC") is amending the Foreign Assets Control Regulations, 31 CFR part 500 (the "FACR"), to add section 500.570, authorizing new transactions involving property in which Cambodia or its nationals have an interest. The effect of this amendment is that transactions involving such property coming within the jurisdiction of the United States or into the possession or control of persons subject to the jurisdiction of the United States after January 2, 1992, or in which an interest of Cambodia or a national thereof arises after that date, are authorized by general license. Newly authorized transactions include, but are not limited to, importations from and exportations to Cambodia (not otherwise restricted), new investment, travel-related transactions and brokering transactions. Property blocked as of January 2, 1992, because of an interest therein of Cambodia or its nationals, remains blocked.

Because the FACR involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938-1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943-1948 Comp., p. 748.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

4. Section 500.570 is added to subpart E to read as follows:

§ 500.570 Authorization of new transactions concerning certain Cambodian property.

(a) Transactions involving property in which Cambodia or a national thereof has an interest are authorized where:

(1) The property comes within the jurisdiction of the United States or into the control or possession of a person subject to the jurisdiction of the United States on or after January 3, 1992; or

(2) The interest in the property of Cambodia or a Cambodian national arises on or after January 3, 1992.

(b) Unless otherwise authorized by the Office of Foreign Assets Control, all property and interests in property of Cambodia or its nationals that were blocked pursuant to subpart B of this part as of January 2, 1992, remain blocked and subject to the prohibitions and requirements of this part.

Dated: January 8, 1992.

R. Richard Newcomb,
Director, Office of Foreign Assets Control.

Dated: January 9, 1992.

Peter K. Nunez,
Assistant Secretary (Enforcement).

[FR Doc. 92-1266 Filed 1-14-92; 10:48 am]
BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-4093-6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of recategorization of sites on the national priorities list.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing the recategorization of 13 Superfund sites on the National Priorities List (NPL) into the Construction Completion category of the NPL. The NPL is appendix B to 40 CFR part 300 of the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. 40 CFR 300.425(e) of the NCP states that "[r]eleases may be deleted from *or recategorized on* the NPL where no further response is appropriate" (emphasis added). The purpose of this recategorization within the NPL is to more clearly communicate to the public the status of cleanup progress at sites.

EFFECTIVE DATE: January 16, 1992.

FOR FURTHER INFORMATION CONTACT: William O. Ross, State Requirements Section (OS–220W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–8335.

SUPPLEMENTARY INFORMATION: The preamble to the 1990 revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (55 FR 8666, 8699–8700, March 8, 1990), states that the EPA would recategorize certain "completed" NPL sites in a "Construction Completion" category. The NCP explained that this category would consist of (a) sites awaiting deletion (i.e., those sites for which a Notice of Intent to Delete has been published), (b) sites awaiting first five-year review after completion of the remedial action, and (c) sites undergoing long-term remedial actions at which the construction phase of the action is complete.

On December 24, 1991 (56 FR 66601), EPA announced that it would no longer defer deletion of sites pending completion of the first five-year review. Accordingly, EPA will no longer use the second subcategory referred to in the NCP, and sites previously placed in that subcategory will be recategorized as "awaiting deletion."

EPA's policy is to shift sites into the Construction Completion category following approval of an Interim Close Out Report (for long-term remedial actions) or a final Close Out Report by the appropriate Agency official. EPA approves an interim or final Close Out Report after remedies have been implemented and are operating properly. The sites being added to the Construction Completion Category today satisfy these criteria.

On February 11, 1991 (56 FR 5634) EPA activated the Construction Completion Category by listing 14 sites as Construction Completions. On September 10, 1991 (56 FR 46121) EPA deleted two of these sites from the NPL. EPA is today adding 13 sites to the Construction Completion category, resulting in a total of 25 sites in this category. The information on completion sites will be reflected in the NPL at the time of the next final NPL update. The additional sites are Cannon Engineering Corporation (MA), Westline Site (PA), Mowbray Engineering Company (AL), Triana/Tennessee River (AL), Lee's Lane Landfill (KY), Cemetery Dump (MI), Old Mill (OH), Pagano Salvage (NM), Crystal City Airport (TX), Conservation Chemical Company (MO), Lawrence Todtz Farm (IA), United Chrome Products, Inc. (OR), and Western Processing Co., Inc. (WA). The 25 sites listed are presently included in the Construction Completion category:

Construction Completion Sites

Sites Awaiting Deletion

1. A.L. Taylor, Brooks, Kentucky.
2. Big River Sand, Wichita, Kansas.
3. Celtor Chemical Works, Hoopa, California.
4. Cemetery Dump, Rose Center, Michigan.
5. Crystal City Airport, Crystal City, Texas.
6. Independent Nail, Beaufort, South Carolina.
7. LaBounty, Charles City, Iowa.
8. Lawrence Todtz Farm, Camanche, Iowa.
9. Lee's Lane Landfill, Louisville, Kentucky.
10. Mowbray Engineering Company, Greenville, Alabama.
11. Newport Dump, Newport, Kentucky.
12. Northern Engraving, Sparta, Wisconsin.
13. Pagano Salvage, Los Lunas, New Mexico.
14. Taylor Borough Dump, Taylor Borough, Pennsylvania.
15. Triangle Chemical, Bridge City, Texas.
16. Westline Site, Westline, Pennsylvania.

Long-term Response Actions

1. Alpha Chemical, Galloway, Florida.
2. Cannon Engineering Corporation, Bridgewater, Massachusetts.
3. Chisman Creek, York County, Virginia.
4. Conservation Chemical Company, Kansas City, Missouri.
5. Mid-South Wood Products, Mena, Arkansas.
6. Old Mill, Rock Creek, Ohio.
7. Triana/Tennessee River, Triana, Alabama.
8. United Chrome Products, Corvallis, Oregon.
9. Western Processing Co., Inc., Kent, Washington.

Dated: January 10, 1992.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 92–1188 Filed 1–15–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

45 CFR Part 3

RIN 0905–AD55

Conduct of Persons and Traffic on the National Institutes of Health Federal Enclave

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Final rule.

SUMMARY: The National Institutes of Health (NIH) is amending the current regulations at 45 CFR part 3 governing the conduct of persons and traffic on the NIH Federal enclave in Bethesda, Maryland, by adding a new provision prohibiting the possession of firearms, explosives, or other dangerous or deadly weapons or materials except by an authorized police officer.

EFFECTIVE DATE: Effective February 18, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. O.W. Sweat, Director, Division of Security Operations, National Institutes of Health, Building 31, room B3B12, Bethesda, Maryland, 20892, telephone (301) 496–6893 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The regulations at 45 CFR part 3 governing the conduct of persons and traffic on the NIH Federal enclave in Bethesda, Maryland, were last amended on January 22, 1990 (55 FR 2067). At that time, a provision prohibiting the possession of firearms, explosives, or other dangerous or deadly weapons, or materials was inadvertently omitted from the regulations. NIH believes that such a provision is necessary to enhance the security and safety of persons conducting business or utilizing the NIH Federal enclave. Therefore, on August 26, 1991 (56 FR 42015), NIH published a notice of proposed rule making announcing its intention to amend the current regulations by adding such a

provision, and invited public comment. The public was given 60 days to comment. No comments were received. Thus, the regulations being issued today are the same as the proposed regulations, with the exception of a clarifying change in § 3.5 to the citations to the GSA regulations concerning the sale of abandoned or unclaimed property and in § 3.42. The regulations add a new paragraph (g) to § 3.42 prohibiting any person other than a specifically authorized police officer from possessing firearms, explosives, or other dangerous or deadly weapons or dangerous materials intended to be used as weapons either openly or concealed. The regulations permit the Director, NIH, upon written request, to permit possession of antique firearms held for collection in living quarters, if the Director finds that the collection does not present any risk of harm. The existing penalties for violation of provisions of the regulations set forth in subpart D are not affected.

Executive Order No. 12291, Federal Regulation

The Director, NIH, has determined that the regulations do not constitute a major rule, as defined under the Order, and that a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

The Director, NIH, certifies that the regulations will not have a significant economic impact on a substantial number of small entities, and therefore, a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6), is not required.

Executive Order No. 12606, Family

The Director, NIH, has determined that the regulations would not have a significant potential negative impact on family well-being, as defined under the Order.

Executive Order No. 12612, Federalism

The Director, NIH, has determined that the regulations would not have a significant potential negative impact on States, in the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as defined under the Order.

Paperwork Reduction Act

The regulations do not contain any information collection requirements subject to review and approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

List of Subjects in 45 CFR Part 3

Conduct standards; Federal buildings and facilities-Government buildings; Firearms; Traffic regulations.

For reasons set forth in the preamble, title 45 of the Code of Federal Regulations, part 3, sections 3.5 and 3.42 are amended to read as set forth below.

Dated: December 12, 1991.

Bernadine Healy,

Director, National Institutes of Health.

PART 3—CONDUCT OF PERSONS AND TRAFFIC ON THE NATIONAL INSTITUTES OF HEALTH FEDERAL ENCLAVE

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

Authority: 40 U.S.C. 318–318d. 486; Delegation of Authority, 33 FR 604.

2. Section 3.5 is revised to read as follows:

§ 3.5 Lost and found, and abandoned property.

Lost articles which are found on the enclave, including money and other personal property, together with any identifying information, must be deposited at the Police Office or with an office (such as the place where found) which may likely have some knowledge of ownership. If the article is deposited with an office other than the Police Office and the owner does not claim it within 30 days, it shall be deposited at the Police Office for further disposition in accordance with General Services Administration regulations (41 CFR part 101–48). Abandoned, or other unclaimed property and, in the absence of specific direction by a court, forfeited property, may be so identified by the Police Office and sold and the proceeds deposited in accordance with 41 CFR 101–45.304 and 101–48.305.

3. Section 3.42 is amended by adding a new paragraph (g) to read as follows:

§ 3.42 Restricted activities.

* * * * *

(g) *Firearms, explosive, and other weapons.* No person other than a specifically authorized police officer shall possess firearms, explosives, or other dangerous or deadly weapons or dangerous materials intended to be used as weapons either openly or concealed. Upon written request, the Director may permit possession in living quarters of antique firearms held for collection purposes, if the Director finds that the collection does not present any risk of harm.

[FR Doc. 92–1143 Filed 1–15–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172 and 173

[Docket No. HM–139H; Amdt. Nos. 172–126, 173–230]

RIN 2137–AB98

Air Bag Inflators and Air Bag Modules for Passive Restraint Systems; Conversion of Individual Exemptions Into Regulations of General Applicability

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) governing the transportation of air bag inflators and air bag modules used in certain passive restraint systems. This action provides for transportation of these devices under provisions contained in the HMR rather than under the exemptions program. In addition, it eliminates a requirement for the separate classification and approval of air bag modules containing approved inflators, and provides exceptions from the HMR for air bag modules installed in steering wheel columns and motor vehicles. This action is based, in part, on a petition for rulemaking (P–1054) filed by the Motor Vehicle Manufacturers Association of the United States, Inc. (MVMA). The intended effect of this action is to simplify and incorporate the terms and conditions of exemptions, which have proven to be effective and safe, into rules of general applicability, and to reduce costs, paperwork and time delays to manufacturers and shippers of these devices.

EFFECTIVE DATE: May 6, 1992. However, compliance with the requirements as adopted herein is authorized immediately.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Ke, (202) 366–4545, Office of Hazardous Materials Technology, or Hattie L. Mitchell, (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The major components of an air bag inflator are an igniter, a booster material and a gas generant. The booster material and gas generant are typically

class B propellant explosives. The igniter is typically a class C explosive. An air bag module is a complete assembly, consisting of an inflatable air bag and an inflator. This assembly is part of a passive restraint system mounted in the steering wheel or glove compartment area of an automobile and is activated when the vehicle is subjected to a predetermined level of impact. When offered for transportation in commerce, the shipment may consist of the inflator, the module, the module assembly installed in a steering wheel column, or installed in an automobile or other lightweight motor vehicle.

Under the HMR, an air bag inflator or an air bag module is described and classed as an explosive power device, class C or B, depending on its size. Except as specifically provided in § 173.56 (formerly § 173.86), the regulations require that all new explosives be examined and assigned a recommended shipping description and hazard class by the Department of the Interior's Bureau of Mines (BOM) or the Association of American Railroads' Bureau of Explosives (BOE), before being classed and approved for transportation by RSPA's Associate Administrator for Hazardous Materials Safety (OHMS) (previously titled Director, Office of Hazardous Materials Transportation). A "new explosive," as defined in § 173.56(a)(2), means an explosive compound, mixture or device, produced by a person who (1) has not previously produced that explosive; or (2) has previously produced that explosive but has made a change in the formulation, design, or process so as to alter any of the properties of the explosives.

Under the terms of exemptions, air bag inflators and air bag modules have been classed as flammable solids for transportation in the United States when the completed packages have been examined for that hazard class by the BOE or BOM and approved by OHMS. The exemptions providing for the transportation of these devices as flammable solids are based on extensive testing performed on the air bag inflators and modules (i.e., bonfire test, initiation of the devices, etc.) RSPA has issued several exemptions authorizing the transportation of air bag inflators and modules as flammable solids. These exemptions are DOT–E 8214, E 8236, E 8273, E 9066, and E 10086. Another exemption, DOT–E 10103, authorizes the transportation of certain air bag modules installed in automobile assemblies without their being subject to the other requirements of the HMR. No incidents have been reported to RSPA involving transportation of these devices under those exemptions.

Based on a petition for rulemaking from the Motor Vehicle Manufacturers Association (MVMA) (P–1054), RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** under Docket No. HM–139H, Notice No. 90–3 (February 26, 1990; 55 FR 6730) to provide for transportation, within the United States, of air bag inflators and air bag modules as flammable solids, under provisions contained in the HMR rather than under the exemption program. As stated in the NPRM, one reason for MVMA's position that these devices should be transported under regulations of general applicability was the automotive industry's projection for equipment of as many as 3 to 4 million U.S.-manufactured cars with air bags in 1990—a substantial increase from the approximately 400,000 air bags installed in 1989 model cars. Beginning in the 1990 model year, all passenger cars sold in the United States are required under regulations issued by DOT's National Highway Traffic Safety Administration (NHTSA) to be equipped with automatic restraints, consisting of either manual safety belts combined with an air bag or automatic motorized safety belts. NHTSA has extended requirements for front seat automatic crash protection to vans, light trucks, utility vehicles and small buses on a phased-in basis for vehicles manufactured after September 1, 1994. For details of NHTSA regulations, refer to a final rule published in the **Federal Register** (56 FR 12472) on March 26, 1991, under Docket No. 74–14, and to requirements found in 49 CFR 571.208.

On December 21, 1990, RSPA published a final rule in the **Federal Register** (55 FR 52402) under Docket No. HM–181. The final rule, which became effective on October 1, 1991, made significant changes to the HMR with respect to the format of the HMR and the hazard communication, classification and packaging requirements. The discussions and the amendments contained in this final rule are aligned with the changes adopted under HM–181.

II. Discussion of Comments to NPRM

RSPA received 12 comments on the proposals contained in the NPRM. These comments were received from trade associations, manufacturers of air bag modules and inflators, shippers, and State and local agencies. Most commenters expressed support for the proposal contained in the NPRM, but several raised concerns about certain provisions in the proposal.

RSPA proposed to retain the requirement that air bag inflators or air bag modules be examined by the BOE or BOM and be classed and approved for transportation by the OHMS. However, an exemption would no longer be required to transport these devices as flammable solids, provided the complete package has been examined by the BOM or the BOE, and classed and approved for transportation by OHMS. Several commenters stated that other than eliminating the need to renew an exemption every 18 or 24 months, the proposal, if adopted, would not significantly simplify the transportation or applicable paperwork burden. In addition, commenters stated that because the explosive component is contained in the inflator, the EX number and the competent authority letter should apply to the inflator, not the module.

Because of numerous variations in sizes and shapes of modules, RSPA, in its exemption process, has encountered difficulties in readily tracing a particular explosive compound, mixture or device to the detailed description contained in the manufacturer's application. Therefore, for identification purposes, RSPA has assigned different EX numbers to the inflator and the module. Upon further review, however, RSPA agrees with the commenters that if an inflator has been examined and approved for transportation, issuance of a separate approval for a module containing an approved inflator is unnecessary. Therefore, this final rule requires that only the inflator be submitted for examination and approval. However, to maintain the traceability of an approved inflator, RSPA is requiring that the product code used to classify the inflator or the EX number assigned by OHMS to the inflator, be shown on the shipping papers in association with the shipping description.

As provided in this final rule, procedures for obtaining an approval of an inflator are as follows:

1. Under the explosive approval provisions in § 173.56, a manufacturer must have the inflator examined by the BOE or BOM. In the same or a different application, an applicant may request classification of an inflator as Division 4.1 (flammable solid), as outlined in § 173.166(b). To facilitate variations in the design, without the need for a new examination, the application data may be based on the maximum parameters of each particular design type for which approval is sought. These maximum parameters must be considered during

the laboratory examination and must be noted in the laboratory report.

2. The manufacturer must then submit a written application for approval of the device to OHMS. An application for the inflator must contain a detailed description of the device, including size, design, chemical composition (including a list of formulas), a master drawing showing location of all components, BOE or BOM test results, and copies of all other relevant background data for processing the approval request. If the application data is found to be satisfactory, the manufacturer will then be issued an EX number approval for the inflator. The approval will be based on the maximum parameters reviewed by the BOE or BOM for which approval was sought. These provisions will allow a manufacturer to make minor changes in the inflator, for example, changes in the weights of the components within the prescribed parameters or changes in hardware not affecting the safety of the units. Any change in formula or packaging not within the parameters of the approved design is subject to the examination and approval provisions in § 173.56.

The new explosive classification approvals issued by RSPA under § 173.56 combine both an EX approval and a competent authority certificate for explosive classification under the international regulations. Therefore, these new approvals satisfy requirements under the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), the International Maritime Organization's International Maritime Dangerous Goods (IMDG) Code and the HMR. RSPA believes these procedures will significantly reduce processing costs and time delays.

The Air Line Pilots Association (ALPA) expressed several concerns about the proposal. ALPA stated that the safety of an aircraft carrying these devices is less likely to be compromised when the devices are prepared for transportation under the terms of an exemption than when they are prepared in accordance with packaging requirements contained in the HMR. RSPA does not agree. Many air bag inflators and modules are being transported as explosives in international commerce by aircraft under the ICAO Technical Instructions. RSPA believes there is no significant difference in the risk posed by packages containing air bag inflators and modules that are transported under the ICAO Technical Instructions, and those packages transported under exemption. As with other hazardous materials, RSPA will continue to monitor incidents involving the transportation of these devices to ensure that they are being transported in a manner that does not endanger public safety.

Most air bag inflators and modules are described and classed as "Articles, pyrotechnic for technical purposes" (UN0430, 1.3G; UN0431, 1.4G; and UN0432, 1.4S) by competent authorities of other countries, based on the amount of pyrotechnic material contained in the device and the design of the device. RSPA, as the competent authority of the United States, has issued competent authority approvals for air bag inflators and modules as "Cartridges, power device, 1.4S." Several commenters questioned the disparities between domestic and international procedures. RSPA believes that, in spite of the differences in assignment, these devices actually have similar designs and composition and, consequently, pose similar levels of risk in transportation. To reduce these disparities and to harmonize descriptions, RSPA will also use the description "Articles, pyrotechnic." However, all approvals issued as "Cartridges, power device" will remain valid.

ALPA also expressed concern over the absence of a POISON label on packages containing air bag inflators that use sodium azide as a gas generant. In addition, ALPA inquired why RSPA did not list or specifically include in the NPRM the ignition and boostering materials or enhancers contained in these devices, and how RSPA plans to address the intrinsic risks associated with those unnamed substances.

Sodium azide is a solid material that is toxic by ingestion. The sodium azide contained in air bags is in pressed disc form, inside a sealed metal housing. RSPA believes the possibility of the metal housing being opened accidentally is minimal. When an air bag is initiated in a vehicular impact, the sodium azide is converted to nitrogen gas which is non-toxic. These devices do not contain detonating explosives. Tests performed on these devices have demonstrated that, should activation occur during transportation, the likelihood of an injury due to deflagration outside the package is very low. There is, however, a slight possibility of surface burns because of the small amount of pyrotechnic contained in these devices. Therefore, RSPA authorizes these devices to be transported domestically as flammable solids. In the final rule, RSPA has provided for these devices in Packing Group III. Procedures for approval of the devices as Division 4.1, that is, a flammable solid, are contained in § 173.166(b).

The NPRM did not include a listing of authorized packagings for air bag inflators and modules shipped as flammable solids. Several commenters stated that the proposal should be amended to specify in the regulations all authorized packagings. RSPA agrees with the commenters and has included a list of the authorized packagings in the packaging provisions in § 173.166. These prescribed packagings are based on performance-oriented standards consistent with requirements adopted under HM–181.

In the NPRM, the proposed packaging provisions for air bag inflators and modules classed as flammable solids contained a note to alert shippers that air bag inflators and modules are regulated as explosives, and not flammable solids, when transported by aircraft under the ICAO Technical Instructions and by vessel under the IMDG Code. That note has not been adopted in this final rule. Instead, column 1 of the Hazardous Materials Table, in § 172.101 (the § 172.101 Table) shows the letter "D" for the entry "Air bag inflators or Air bag modules," 4.1. The letter "D" identifies this proper shipping name is appropriate for describing these devices in domestic transportation but may not be appropriate for international transportation.

Mercedes-Benz of North America, Inc. (MBNA) stated that RSPA's use of the nomenclature "passive restraints" was in error. The commenter stated that air bags are "supplementary restraints" which must be used with safety belts and that the term "passive restraints" may imply that an air bag is a stand-alone restraint. MBNA submitted copies of excerpts from owner's manuals of other automobile manufacturers to show that the terminology "supplemental restraints" is used industry-wide.

RSPA uses the description "for passive restraint system" in exemptions to describe the purpose of these devices and, therefore, used it in the proposal. Because the description "supplemental restraint system" appears to be accepted industry terminology, RSPA has provided for the shipping description "for supplemental restraint" systems in the § 172.101 Table.

III. Section-by-Section Review

Section 171.6

The table in paragraph (b)(2) is amended by adding, in column 3 of the

entry for OMB control number 2137–0557, the section citation "173.166".

Section 172.101

The § 172.101 table is amended by adding an entry for "Air bag inflators or Air bag modules for supplemental restraint systems" with the hazard class "4.1" and the identification number "NA1325". This shipping name and corresponding hazard class is authorized for domestic shipments as denoted by the letter "D" in column 1.

This entry also references "Articles, pyrotechnic for technical purposes" (UN0430, UN0431, and UN0432). Use of this latter description and the associated explosive hazard classes is authorized for both domestic and international shipments. Inflators and modules being imported into the United States must be approved by OHMS in accordance with § 173.56(g) based on the approval of the competent authority of the country of origin.

The Air Transport Association of America requested a clarification on whether the net weight limitation applies only to the hazardous materials present in devices or to the entire assemblies. When transported by aircraft, the net quantity limitation applies to the weight of all assemblies contained within the package, that is the total weight of the hazardous materials and the hardware, to include the air bag when applicable. When shipped as Division 4.1, packaging group III, a maximum net quantity in one package of 25 kilograms (50 pounds) is authorized for transport by passenger aircraft, and 100 kilograms (220 pounds) is authorized for transport by cargo aircraft.

Section 173.166. (Proposed as § 173.199)

This section contains applicable packaging requirements for air bag inflators when classed as Division 4.1. Paragraph (b) contains procedures for air bag inflators to be classed as Division 4.1 when the device has been examined by the BOE or BOM and approved for that class by OHMS. Paragraph (c) requires that the product code used to classify the inflator or the EX number assigned to the inflator by OHMS must be noted on the shipping paper accompanying the shipment

IV. Administrative Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

This final rule has been reviewed under the criteria specified in § 1(b) of Executive Order 12291 and (1) is determined not to be "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034); (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the docket.

B. Executive Order 12612

This final rule has been reviewed in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effect on the States, on the current Federal-State relationship, or on the current distribution of power and responsibilities among levels of government. Thus, this final rule contains no policies that have Federalism implications, as defined in Executive Order 12612, and no Federalism Assessment is required.

c. Regulatory Flexibility Act

The provisions of this final rule impact shippers and manufacturers of air bag inflators and modules and will have the net result of reducing costs to persons affected by this final rule. Based on available information, this rule will not have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

D. Paperwork Reduction Act

Information collection requirements contained in current § 173.56 pertaining to new explosives have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) and assigned control number, OMB No. 2137–0557. The information collection contained in § 173.166(b) pertaining to classification of air bag inflators and modules as flammable solids is also approved under OMB No. 2137–0557 (previously approved under OMB No. 2137–0551).

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR parts 171, 172 and 173, are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1818; 49 CFR part 1.

§ 171.6 [Amended]

2. In § 171.6, in paragraph (b)(2), the entry in the table for Current OMB control No. "2137–0557" is amended by adding in numerical order, under column 3, the section citation "173.166".

PART 172—HAZARDOUS MATERIALS TABLES, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS REQUIREMENTS AND EMERGENCY RESPONSE INFORMATION REQUIREMENTS

2a. The authority citation for part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

2b. In § 172.101, the Hazardous Materials Table is amended by adding entries, in alphabetical sequence, to read as follows:

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class of division	Identification numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
.....	*ADD*												
D.....	Air bag inflators *or* Air bag modules *for supplemental restraint systems. See also* Articles, pyrotechnic *for technical purposes* (UN0430, UN0431, UN0432).	4.1	NA1325	III	Flammable solid.		166	166	166	25kg	100kg	A	

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR part 1, unless otherwise noted.

4. A new § 173.166 is added to subpart E to read as follows:

§ 173.166 Air bag inflators and modules (for supplemental restraint systems).

(a) *Definitions.* An air bag inflator (consisting of a casing containing an igniter, a booster material and a gas generant) is a gas generator used to inflate an air bag in a supplemental restraint system in a motor vehicle. An air bag module is the air bag inflator plus an inflatable bag assembly.

(b) *Classification.* An air bag inflator may be classed as Division 4.1 only if—

(1) The manufacturer has submitted, to the Bureau of Explosives (BOE) or the Bureau of Mines (BOM), a complete application containing a detailed description of the inflator (or, if more than a single inflator is involved, the maximum parameters of each particular inflator design type for which approval is sought) and details on the complete package.

(2) The manufacturer submits an application, including the BOE or BOM test results and report recommending the shipping description and classification for each device or design type, to the Associate Administrator for Hazardous Materials Safety, and is notified in writing by the Associate Administrator that the device has been classed as Division 4.1 and approved for transportation.

(c) *EX numbers.* When offered for transportation, the shipping paper must contain the EX number or product code for each approved inflator in association with the basic description required by § 172.202(a) of this subchapter. Product codes must be traceable to the specific EX number assigned to the inflator by the Associate Administrator for Hazardous Materials Safety. A module must be identified as containing the originally approved inflator.

(d) *Exceptions.* (1) An air bag module that has been approved by the Associate Administrator for Hazardous Materials Safety and is installed in a steering column or a motor vehicle is not subject to the requirements of this subchapter.

(2) An air bag module, containing an inflator that has previously been examined and approved for transportation as a Division 4.1 material, is not required to be submitted for examination or approval.

(e) *Packagings.* The following packagings are authorized:

(1) 4C1, 4C2, 4D, or 4F wooden boxes.

(2) 4G fiberboard boxes.

(3) Reusable high strength plastic or metal containers are authorized for shipment of air bag inflators and modules by highway and rail from a manufacturing facility to the assembly facility, subject to the following conditions:

(i) The gross weight of the container may not exceed 908 kg (2,000 pounds). The container structure must provide adequate support to allow containers to be stacked at least three high with no damage to the containers or devices.

(ii) If not completely enclosed by design, the container must be covered with plastic, fiberboard, or metal. The covering must be secured to the container by non-metallic banding or other comparable methods.

(iii) Internal dunnage must be sufficient to prevent movement of the devices within the container.

(f) *Labeling.* Notwithstanding the provisions of § 172.402 of this subchapter, each package must display a FLAMMABLE SOLID label. Additional labeling is not required when the package contains no hazardous materials other than the devices.

Issued in Washington, DC, on January 8, 1992, under authority delegated in 49 CFR 1.53.

Travis P. Dungan,

Administrator.

[FR Doc. 92–898 Filed 1–15–92; 8:45 am]

BILLING CODE 4910–60–M

Proposed Rules

Federal Register
Vol. 57, No. 11
Thursday, January 16, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 729 and 1446

Poundage Quota and Price Support Programs for Peanuts; Request for Comments

AGENCY: Agricultural Stabilization and Conservation Service, and Commodity Credit Corporation, USDA.

ACTION: Request for comments.

SUMMARY: In order to complete the final regulations for the 1991–95 crop years, this notice seeks, with respect to 7 CFR parts 729 and 1446, public comments for the 1992 through 1995 crops of peanuts concerning: (1) The definition in § 729.103 of actual undermarketings of quota peanuts for producers, (2) the method for making required reductions in a farm's poundage quota pursuant to § 729.204, (3) the conditions under which loan additional peanuts may be sold under the "immediate buyback" provisions in § 1446.309, and (4) whether disposition credit should be granted in § 1446.411 for peanut products made from contract additional peanuts and exported to Canada or Mexico. Additionally, this notice seeks comments for the 1991 crop as well as the 1992 through 1995 crops of peanuts with respect to the requirements for granting an extension of time for a handler to export or crush contract additional peanuts. The extent to which changes in the regulations must be proposed or promulgated will be determined following the receipt and consideration of the comments.

DATES: Comments must be received on or before February 6, 1992 to be assured of consideration. The comment period has been limited to 21 days to allow time for proposing changes in parts 729 and 1446 as may appear to be needed following the receipt of comments pursuant to this notice.

ADDRESSES: Send comments to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, DC 20013 or deliver to room 5750, South Building, 14th Street and Independence Avenue SW., Washington, DC. All written comments received in response to this request will be made available for public inspection in room 5750 South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m. on regular workdays.

FOR FURTHER INFORMATION CONTACT: Jack S. Forlines, Deputy Director, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone (202) 720–0156.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and has been classified not major because regulatory changes are not proposed by this notice at this time and proposals for change that may result from this notice would not meet any of the three criteria identified under the Executive Order. With respect to those criteria, it has been determined that proposals made in connection with the subject matter of this notice would not have an annual effect on the economy of $100 million or more, and would not result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions. Furthermore, such action would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this notice applies are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since new rules are not proposed by this notice. Further, the Commodity Credit Corporation and the Agricultural Stabilization and Conservation Service are not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

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

Background

On April 19, 1991, interim rules were published in the **Federal Register** (56 FR 16206 and 56 FR 16227) which set forth, for the 1991 through 1995 crops of peanuts, regulations in 7 CFR parts 729 and 1446 to govern the federal poundage quota and price support programs for peanuts and peanut handler operations for the 1991–95 crop years. On August 13, 1991, a final rule was published in the **Federal Register** (56 FR 38319) that adopted with certain modifications the interim rules that were published on April 19, 1991.

This notice seeks comments on five subjects. Although the final rule generally contained rules for all of the 1991–95 crops, in several cases the rule was restricted to the 1991 crop in order to allow for further comment. In other cases, the final rule preamble specifically indicated that further comment would be sought, generally. One other matter involves a current question about program operation. The five subjects are as follows:

1. In the final rule, the definition for "undermarketings" in § 729.103 defined "actual" undermarketings for only the 1991 crop of peanuts. Accordingly, the term "actual undermarketings" remains to be defined for the 1992 through 1995 crops of peanuts.

2. In § 729.204(d)(2), the regulations provided the method by which a farm's quota would be reduced for the 1991 crop of peanuts if, for any 2 of the 3 preceding years, the produced and considered produced quantity of peanuts was less than such farm's basic quota for the respective years. Since only 1991 was covered, the reduction method remains to be resolved for the 1992 through 1995 crops.

3. In addition, the final rule preamble indicated that, with respect to the 1992 through 1995 crops of peanuts, further public comment would be sought on whether export credit would be granted for peanut products that are made from "additional" peanuts and exported to Canada or Mexico.

4. The final rule also indicated that additional comment would be sought concerning the conditions under which "additional" peanuts may be pledged as collateral for a price support loan and purchased by a handler under "immediate buyback" provisions.

5. Additionally, because of concerns expressed by the public, comments are being requested on the conditions by which an extension of time for exporting or crushing contract additional peanuts may be granted to a handler. Because such extensions will not occur until the late summer or fall of 1992, comments on this issue are sought with respect to the handling of the 1991 crop as well as for the 1992–95 crops.

Considerations involved with these issues, with citations to the particular regulatory provisions involved, are set out below.

1. Actual Undermarketings

With respect to undermarketings of quota peanuts by producers, section 358–1(b)(8) of the Agricultural Adjustment Act of 1938, as amended, (the 1938 Act) (7 U.S.C. § 1358–1(b)(8)) generally provides that the farm poundage quota for a farm for any marketing year shall be increased, within the national limitation on adjustments for undermarketings provided for in section 358–1(b)(9) of the 1938 Act, by the number of pounds by which the "total marketings of quota peanuts from the farm during previous marketing years (excluding any marketing year before the marketing year for the 1989 crop) were less than the total amount of applicable farm poundage quotas for the marketing years." For purposes of implementing the undermarketing provision of the 1938 Act, § 729.103 of the regulations has defined the term "undermarketings." Under the definition, the term "undermarketings" has been divided into 3 categories; namely, "actual" undermarketings, "cumulative actual" undermarketings, and "effective" undermarketings. Effective undermarketings are the amount by which a farm's poundage quota is increased in the current year from cumulative actual undermarketings. Generally, cumulative actual undermarketings for a farm are the sum of the farm's actual undermarketings from the 1990 and subsequent crops of peanuts less the cumulative quantity of such undermarketings that have been allocated to such farm as effective undermarketings. The regulation limited the definition of "actual marketings" to the 1991 quota determination only in order to allow for further comment on the calculation of such undermarketings for the 1992–95 crop years.

Request for Comments

Accordingly, the term "actual undermarketings" must be defined in the regulations for quota allocation determinations for the 1992–95 crops. The definition is necessary to meet the statutory requirement for determining the number of pounds by which the total marketings of quota peanuts from the farm were less than the farm poundage quota. The issue is whether "total marketings of quota peanuts", as used in the statute, should be construed to cover only the actual marketing of peanuts as quota peanuts OR should "total marketings of quota peanuts" include, to the extent the quota is undermarketed, any peanuts that were marketed as additional peanuts that could have been marketed as quota peanuts.

Consider the following examples:

a. Farm A has an effective quota of 100,000 pounds. The producer had a contract for 40,000 pounds of additional peanuts. Farm A produced a total of 110,000 pounds of Segregation 1 peanuts. The producer delivered 40,000 pounds of additional peanuts under the contract. This left only 70,000 pounds of peanuts for marketing as quota peanuts. If "total marketings of quota peanuts" includes *only* actual marketings as quota peanuts the farm would have undermarketings of 30,000 pounds. But, if "total marketings of quota peanuts" includes peanuts that could have been marketed as quota peanuts the farm will not have any undermarketings.

b. Farm B has an effective quota of 200,000 pounds. The producer has a contract for 50,000 pounds of "additional" (non-quota) Spanish peanuts. The producer planted both Spanish and Runner peanuts. The initial outlook for the producer's crop was good, with anticipated production of 65,000 pounds of Spanish peanuts and 200,000 pounds of Runner peanuts. The Spanish peanuts were harvested first. Accordingly, 50,000 pounds of Spanish peanuts were delivered in settlement of the additional peanut contract and the remainder of the Spanish production (3,000 pounds) was marketed as quota peanuts. Adverse weather conditions, developed and the Runner production was 160,000 pounds. Of this amount 13,000 pounds were either Segregation 2 or Segregation 3 peanuts. These were marketed as additional loan peanuts. The remaining quantity (147,000 pounds) was marketed as quota peanuts. In addition, as permitted by the program regulations, the producer made a "disaster transfer" from the additional loan inventory to the quota loan inventory for the 13,000 pounds of Segregation 2 and Segregation 3 peanuts. Thus, the farm had quota marketings of 163,000 pounds. If "total marketings of quota peanuts" include *only* marketings of peanuts as quota peanuts, the farm will thereby have undermarketings of 37,000 pounds. If "total marketings of quota peanuts" include peanuts that could have been marketed as quota peanuts the farm will not have any undermarketings.

c. Farm C has an effective quota of 50,000 pounds and produces 57,000 of Segregation 1 peanuts. The producer marketed 40,000 pounds of the peanuts as quota peanuts and marketed 17,000 pounds of peanuts as additional loan peanuts. If "total marketing of quota peanuts" includes *only* quota marketings the farm will have undermarketings of 10,000 pounds. If "total marketings of quota peanuts" includes peanuts that could have been marketed as quota peanuts the farm will not have any undermarketings.

Producers would have greater marketing flexibility if "total marketings of quota peanuts" include *only* quota marketings because the producer could consider the quality of the peanuts, the type of peanuts if producing more than one type, and any contract for additional peanuts, in making a marketing decision and such decision could be made without fear of loss of undermarketings if subsequent quota marketings do not use the farm's available poundage quota. However, the result would be more undermarketings nationwide than would be the case if "total marketings of quota peanuts" include peanuts that were marketed as additional peanuts when such peanuts could have been marketed as quota peanuts. By statute, in section 358–1 of the 1938 Act, the maximum effective undermarketings that may be included in the next year's poundage quota on all farms, on a nationwide basis, is limited to an amount that does not exceed 10 percent of the national poundage quota for such year. If the available undermarketings exceed that limit on a national basis, a proration of undermarketings is made for eligible individual farms.

Comments are requested on how the "total marketings of quota peanuts" should be determined. Most helpful will be comments that include an explanation to support the conclusion reached by the person submitting the comment.

2. Quota Reductions for Nonproduction

Section 358–1(b)(3) of the 1938 Act provides that "Insofar as practicable and on such fair and equitable basis as the Secretary may by regulations prescribe, the farm poundage quota established for a farm for any of the 1991 through 1995 marketing years shall be reduced to the extent that the Secretary determines that farm poundage quota established for the farm for any 2 of the 3 marketing years preceding the marketing year for which the determination is being made was not

produced, or considered produced, on the farm."

Request for Comments

The final rule in § 729.204, set out the method by which a quota reduction would be calculated for the 1991 crop when the peanuts produced, or considered produced, on a farm in 2 of the 3 preceding years was less than the farm's poundage quota. The rule left open that issue for the determination of farm quotas for the 1992–95 crops. The questions at issue are indicated by the following example:

Year	Poundage quota	Produced and considered produced	Underproduced pounds	Percentage of underproduction
1989 ...	100,000	140,000	0	0
1990 ...	100,000	0	100,000	100
1991 ...	100,000	98,000	2,000	2

In the above case, it appears a reduction would be required for the farm's 1992 crop quota under any reasonable method of making the lack of production calculation. A reduction would not have been required had the farm produced and considered produced peanuts equal to or greater than 100,000 pounds in 1991, rather than 98,000 pounds.

Two methods of making reductions for nonproduction have been used in the past. Prior to the 1991 crop, a "factor method" was used. In 1991, a "poundage method" was used.

Basically, the "factor method" determines the reduction on the basis of the average of the 2 worst years of the 3 year period while the "poundage method" determines the reduction on the sum of the underproduced pounds in the 2 best years of the 3 year period. Under either method if, during any 2 years of a 3 year period, a farm did not produce peanuts and did not receive considered produced credit the farm's quota would be reduced to zero, except that under the "poundage method" if the State's poundage quota increased as a result of an increase in the national poundage quota, the farm may retain part or all of the increase in poundage quota that resulted from such increase in the State's poundage quota during any of the 3 years ending with the year in which the reduction is made.

Using the example set out above, the "factor method" would result in a reduction of 51,000 pounds in the farm's 1992 poundage quota and a further reduction of approximately 25,000 pounds in the farm's 1993 poundage quota. (The 1993 reduction could be greater if the peanuts produced and considered produced on the farm in 1992 should be less than the farm's 1992 poundage quota.)

Using the example set out above, the "poundage method" would result in a reduction of 2,000 pounds in the farm's 1992 poundage quota (an amount equal to the deficiency in production of the 1991 crop that effectively resulted in the required reduction in quota) and a further reduction would not be required in the farm's 1993 poundage quota unless the amount of peanuts produced and considered produced on the farm in 1992 is less than the farm's 1992 poundage quota.

Comments on this issue should consider the "fair and equitable" provision of the statute and provide comments as to whether the "factor method", the "poundage method", or some other method should be used. An explanation of the basis of the commenter's preference will increase the value of the comment. In particular, if a method other than the "factor method" or "poundage method" is recommended, it would be most helpful if it is described in sufficient detail as to make implementation possible if it is considered to be the best available option.

3. Immediate Buybacks

Section 359a(g)(1) of the 1938 Act (7 U.S.C. 1359a(g)(1)) provides that additional peanuts received under loan may be offered, "in accordance with regulations issued by the Secretary", by the Commodity Credit Corporation (CCC) of the Department of Agriculture for sale for domestic edible use at prices not less than those required to cover all costs incurred with respect to the peanuts plus not less than 100 percent of the loan value of quota peanuts if the additional peanuts are sold and paid for during the harvest season upon delivery by, and with the written consent of, the producer. Sales of additional peanuts in this manner commonly are known as "immediate buyback" sales. Sales of loan additional peanuts by CCC, for domestic edible use, after delivery of the peanuts into the loan inventory can also be made at subsequent times, but at higher prices. Those "non-immediate" buybacks do not require producer permission.

Section 359a(f)(1) of the 1938 Act (7 U.S.C. 1359a(f)(1)) provides that handlers may, under such regulations as the Secretary may issue, contract with producers for the purchase of additional peanuts for crushing or export, or both.

Regulations governing "immediate buybacks" are set forth in § 1446.309. The final rule indicated that comment would be sought on whether to set conditions on immediate buybacks in addition to these specified in the statute. For example, possible additional conditions would include preventing an immediate buyback if the producer has an unfulfilled additional peanut contract.

Request for Comments

With respect to the 1992 through 1995 crops of peanuts, comment is sought on whether, if a producer has given the statutorily required written consent for loan additional peanuts to be sold upon delivery, additional restrictions should be required by regulations before such peanuts may be purchased as an "immediate buyback?"

The following considerations may be helpful in making comments on this issue:

a. Contracting parties who wish to restrict "immediate buybacks" may agree to contract provisions to restrict such "immediate buybacks" and can seek private enforcement of these provisions without the need for regulations to impose such restrictions as a program matter on all producers and handlers.

b. In a year of tight supplies of peanuts, if additional restrictions are not applicable, some of the domestic needs for peanuts could be met by the contracting parties mutually agreeing to use the "immediate buyback" provision in lieu of marketing the peanuts in satisfaction of the contract for additional peanuts.

c. Some producers plant more than one type of peanuts but contract only for delivery of one of the types as additional peanuts. Additional restrictions on the purchase of such producer's peanuts under the "immediate buyback" provisions may be restrictive to such a producer, especially when the type of peanuts that has not been contracted is harvested before the contracted type. Also, if such producer had a contract for each type of peanuts produced and the contract limited the quantity to be delivered by type, any additional restrictions that are not by type could be restrictive to the producer when the producer has satisfied the contract for one type of peanuts but has not satisfied the contract for another type of peanuts.

d. Peanut harvesting and marketing may begin 6 or more weeks before the final date for filing contracts to purchase additional peanuts (September 15 of the crop year). Accordingly, even though a contract has been signed by all interested parties, if regulations were to

require that the producer must satisfy any approved contract for additional peanuts before such producer possibly could offer peanuts for "immediate buyback", the producer possible could still offer peanuts for "immediate buyback" until such time as the contract is filed and approved. Thus, the producer might be able to avoid, before September 15, any addition restrictions that may relate to contracts for additional peanuts unless immediate buybacks were prohibited altogether for peanuts delivered before that date.

e. If additional peanuts contracts must be satisfied first, an additional issue would be whether the parties to the contract could mutually agree that an immediate buyback may take place despite the contract.

If restrictions are recommended, commenters should indicate what restrictions they believe should be imposed and the benefits the commenter believes would result from such restrictions.

4. Eligible Country

Section 359a(d)(6) of the 1938 Act (7 U.S.C. 1356a(d)(6)) provides that it any additional peanuts exported by a handler are reentered into the United States the importer shall be subject to a penalty at a rate equal to 140 percent of the loan level for quota peanuts on the quantity of peanuts reentered.

Since the inception of the peanut poundage quota program beginning with the 1978 crop, disposition credit for contract additional peanuts has not been granted for peanut products that are made from contract additional peanuts if such products are exported to Canada or Mexico. That policy appears in the current regulations at § 1446.103 under the definition of "Eligible country." This policy reflects the price differential between quota peanuts and contract additional peanuts and the difficulties that would exist in effectively policing the reimportation of exported contract additional peanuts in competition with domestic quota peanuts.

The issue is whether, with respect to the 1992 through 1995 crops of peanuts, the prohibition against granting disposition credit for peanut products made from contract additional peanuts and exported to Canada or Mexico should be:

a. Continued,
b. Discontinued without restrictions, or
c. Discontinued with restrictions.

Request for Comments

Comments are requested with respect to whether export credit should be granted for peanut products that are made from contract additional peanuts and exported to Canada or Mexico. Most desired are comments that provide justifications, explanation, and/or supporting data. Comments that support "discontinuation with restrictions" should address the issue of the restrictions that should be imposed and the benefits that should result from such restrictions.

5. Extension of Time

Requests have been made that the Department of Agriculture reconsider the requirement in § 1446.410 that, in order to receive an extension of time to dispose of contract additional peanuts, the handler must explain why the handler will be unable to meet the prescribed disposition date.

Section 1446.410 of the regulations provides that the final disposition date shall be October 15 of the calendar year following the calendar year in which the peanuts were grown. However, under the Final rule, a marketing association with the concurrence of the Director, Tobacco and Peanuts Division, may extend the date to November 30 of such following year (i.e., the calendar year following the crop year) if the handler, by September 15, files a written request that specifies the number of pounds for which an extension is requested and fully explains why disposition of the contract additional peanuts cannot be completed by October 15. Since for the 1991 crop these deadlines will not occur until 1992, comment on this issue is sought for the 1991 crop as well as for the 1992–95 crops.

The question, accordingly, is whether an extension of time should be granted for a handler to dispose of contract additional peanuts without requiring an explanation from the handler to show, as under the current rule, that conditions beyond such handler's control will prevent compliance with the prescribed disposition deadline.

If an explanation is not required and an automatic extension of time is granted if a written request is made by the prescribed disposition date, an additional question is whether there should be any circumstances under which an extension of time should be granted if the request is made after the prescribed disposition date.

Also at issue is whether October 15 of the calendar year after the calendar year in which the contract additional peanuts were grown is a reasonable date by which such peanuts should be crushed or exported.

Request for Comments

Comments are requested to address this issue. Suggestions should be as specific as possible. For example, those commenters who believe October 15 of the year following the crop year is not a reasonable disposition date should specify an alternative deadline.

Signed at Washington, DC, on January 10, 1992.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–1212 Filed 1–15–92; 8:45 am]

BILLING CODE 3410–05–M

FARM CREDIT ADMINISTRATION

12 CFR Part 613

RIN 3052–AB29

Eligibility and Scope of Financing; Nondiscrimination in Lending

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), proposes to amend 12 CFR part 613 governing nondiscrimination in lending by Farm Credit System (System) institutions. The proposed amendments implement changes made in title VIII of the Civil Rights Act of 1968 by the Fair Housing Amendments Act of 1988. The amendments by FCA would conform FCA's regulations to the requirements of the statute and implementing regulations promulgated by the Department of Housing and Urban Development (HUD). The proposed amendments would add two new protected categories, prohibit discrimination in "residential real estate-related transactions," as defined in the law, revise the Equal Housing Lender Poster, conform complaint processing procedures, and make technical amendments referencing HUD's fair housing regulations and the Equal Credit Opportunity Act.

DATES: Comments should be received on or before February 18, 1992.

ADDRESSES: Comments may be mailed or delivered (in triplicate) to Jean Noonan, General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

John Hays, FCA Examiner, Policy and Risk Analysis Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4258, TDD (703) 883–4444, or

Christine C. Dion, Attorney, Regulatory and Legislative Law Branch, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. General

Prior to 1988, title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 *et seq.*, made it unlawful to discriminate in any aspect of the sale, rental, and financing of a dwelling because of race, color, religion, sex, or national origin. The Fair Housing Amendments Act of 1988, Public Law 100–430; 102 Stat. 1619 (1988 Act), amended title VIII to (1) add prohibitions against discrimination in housing on the basis of handicap and familial status (having one or more children under the age of 18), (2) expand coverage of the prohibitions by substituting the term "residential real estate-related transactions" for "financing" of housing, (3) strengthen administrative enforcement procedures and private civil rights of action, and (4) increase monetary damages that can be awarded when discriminatory housing practices are found. The 1988 Act also designated title VIII as the Fair Housing Act.

The 1988 Act became effective March 12, 1989. HUD published final implementing regulations (1) interpreting the scope of the coverage provided and the nature of activities made unlawful by the 1988 Act; and (2) setting forth procedures applicable to the receipt and processing of complaints and the initiation and conduct of formal enforcement proceedings. See amendments to 24 CFR parts 14, 100, 103–106, 109, 110, 115, and 121 at 54 FR 3232 (January 23, 1989). The regulations became effective March 12, 1989.

Section 808(d) of the Fair Housing Act requires all agencies (including any Federal agency having regulatory or supervisory authority over financial institutions) to administer their programs and activities relating to housing and urban development in a manner to further affirmatively promote the goal of fair housing and to cooperate with the Secretary of HUD to further such purposes. Consistent with the requirements of section 808(d), the FCA is proposing to amend its regulations prohibiting discrimination in lending to conform with changes made in title VIII by the 1988 Act and with HUD's implementing regulations.

The FCA's regulations governing nondiscrimination in lending by System institutions, 12 CFR part 613, affirmatively promote fair housing and lending, as expressly required by section 808 (d) and (e) of the Fair Housing Act, and reflect the prohibitions of the Equal Credit Opportunity Act (ECOA) and Regulation B, 12 CFR part 202, of the Board of Governors of the Federal Reserve System (FRB), which are also applicable to System institutions.

System institutions are subject to the nondiscrimination-in-lending requirements of the Fair Housing Act and HUD's implementing regulations, as well as the requirements of the Equal Credit Opportunity Act and Regulation B. While HUD has primary responsibility to enforce the Fair Housing Act, the FCA's enforcement powers (title V, part C of the Farm Credit Act of 1971) are also available to enforce the statute and HUD's implementing regulations. The FCA has primary enforcement responsibility for ECOA. Application of HUD's interpretations in FCA's regulations does not change the nature or scope of eligible lending authorized for System institutions under the Farm Credit Act of 1971, Public Law 92–181, as amended.

The FCA's proposed regulations, in addition to requiring that lending and advertising be nondiscriminatory, would set forth the required text of the Equal Housing Lender Poster that must be publicly displayed by System institutions. The poster would reflect the prohibitions contained under title VIII, as amended by the 1988 Act, and under the Equal Credit Opportunity Act of 1974, Public Law 93–495, as amended by the Equal Credit Opportunity Act Amendments of 1976, Public Law 94–239, 15 U.S.C. 1601 *et seq.*

The proposed regulations would substitute the word "dwelling" for the words "rural residence" throughout the regulations to conform the FCA's nondiscrimination in lending regulations with the operative language of the Fair Housing Act and HUD's implementing regulations. This change would not change the requirement of the FCA's eligibility regulations, adopted pursuant to the Farm Credit Act of 1971, that restrict System institutions' financing of rural housing to a single-family, moderate-priced dwelling with appropriate appurtenances, which is or will be used as a permanent, year-round home by the applicant and which is located on an appropriate site in a rural area (§ 613.3040(a)(2)). HUD's regulations interpret the statutory definition of "dwelling" to include cooperatives, condominiums, time-sharing properties, and mobile homes. This definition is broader than the definition of dwelling in the FCA's regulation implementing the rural housing lending authority, but does not in any way expand the lending authority of System institutions.

Title VIII of the Civil Rights Act of 1968 delegated the authority and responsibility for administering fair housing policy to the Secretary of HUD. Under the provisions of title VIII, persons who believed that they had been or were about to be subjected to a discriminatory housing practice could file a complaint with the Secretary. HUD was required to investigate and conciliate the issues in the complaint. However, title VIII did not provide the Secretary with any administrative mechanism for redressing acts of discrimination against an individual when informal efforts to conciliate a case were unsuccessful. The Secretary could not take administrative action or sue violators to enforce the law. While complaints could be referred to the Attorney General for litigation if they involved a pattern or practice of discrimination, Federal courts did not award individual relief to the victims of discrimination in such cases. Victims of discrimination who brought their cases into court achieved limited success due to a short statute of limitations and disadvantageous limitation on punitive damages and attorney's fees.

The Fair Housing Act strengthened HUD's administrative enforcement of title VIII by providing an administrative enforcement procedure. HUD continues to investigate complaints and conciliate conflicts between parties, who can also agree to arbitration. However, under title VIII as amended, if conciliation fails and HUD determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary determines whether to proceed with a charge or a civil action. When a charge is filed, and no party elects to have claims decided in a civil action, the Secretary provides for an administrative hearing conducted by an administrative law judge (ALJ). The ALJ makes findings of fact and conclusions of law. If the ALJ finds that a respondent had engaged in or is about to engage in a discriminatory housing practice, the ALJ issues an order which may, to vindicate the public interest, assess a civil penalty against the respondent in the amount of $10,000, $25,000, or $50,000. The decision of the ALJ may be

reviewed by the Secretary. The Secretary may affirm, modify, or set aside, in whole or in part, the initial decision of the ALJ or remand the initial decision for further proceedings. The Secretary must serve the final decision on all parties no later than 30 days from the issuance of the initial decision of the ALJ, otherwise such initial decision will become the final decision of HUD. Any final agency decision by HUD on the issue of discrimination is subject to review on appeal by the appropriate United States Court of Appeals. If the Secretary concludes at any time following the filing of a complaint that prompt judicial action is necessary, the Secretary may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint. When the Secretary authorizes civil action, the Attorney General is required to commence and maintain the action. The Attorney General continues to have authority to initiate civil actions in "pattern or practice" cases and in cases where denial of rights to a group raises an issue of general public importance. The court may assess civil penalties against a defendant up to a maximum of $50,000 for a first violation and $100,000 for any subsequent violations.

The Fair Housing Act also strengthened private enforcement by expanding the statute of limitations, removing the limitation on punitive damages, and bringing attorney's fees language in title VIII closer to the model used in other civil rights laws.

In addition to creating an administrative enforcement mechanism for HUD, the Fair Housing Act provides protection against discrimination in housing to persons with handicaps and families with children, as defined in the statute.

The Fair Housing Act defines the term "handicap" to mean a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. HUD has interpreted the term "being regarded as having an impairment" to mean (1) a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation, (2) a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment, or (3) no physical or mental impairment but treatment by another person as having such an impairment.

The Fair Housing Act exempts from the familial status provisions certain "housing for older persons." The purpose of the exemption is to ensure that prohibitions against discrimination because of familial status do not unfairly limit housing choices for elderly persons.

Prior to 1988, discrimination in financing of housing under title VIII dealt only with the making of loans and in the provision of other financial assistance. The 1988 Act revised title VIII by substituting a prohibition against discrimination in "residential real estate-related transactions" for a prohibition against discrimination in the "financing" of housing. Under the Fair Housing Act, it is unlawful for any person or other entity whose business includes engaging in "residential real estate-related transactions" to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin. By substituting the term "residential real estate-related transactions" for the term "financial," the Fair Housing Act expanded the types of financing transactions that were previously covered by the nondiscrimination requirements of title VIII.

The definition of "residential real estate-related transactions" in the Fair Housing Act includes not only the making of loans or the provision of other financial assistance, but also the purchase of loans secured by residential real estate or made for the purchase, construction, improvement, repair, or maintenance of a dwelling. HUD has interpreted the "purchase of loans" to include the purchase and pooling of mortgage loans as well as the terms and conditions of the sale of securities issued on the basis of such loans (24 CFR 100.125). The definition of the term "residential real estate-related transaction" also includes the appraisal, brokering, and selling of residential real property.

The term "appraisal" is defined in HUD's implementing regulations (24 CFR 100.135) as an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing, or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or is transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value. Unlawful practices under HUD's § 100.135 include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling when the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status, or national origin.

II. Proposal Amendments

Section 613.3140 of the existing regulations, entitled "Policy," sets forth the policy of nondiscrimination in lending by System institutions as adopted by the Federal Farm Credit Board in 1976. The FAC proposes to delete this section because the substance of this policy would be appropriately implemented through proposed §§ 613.3145, 613.3150, 613.3151, 613.3152, 613.3160, 613.3170 and 613.3175.

A new section 613.3145, entitled "Definitions," would define the major terms used in subpart E of part 613, consistent with the Fair Housing Act and the ECOA.

Section 613.3150 of the proposed regulations, entitled "Nondiscrimination in lending and other services," would be amended in paragraph (a) to prohibit discrimination in making credit or other financial services available in a residential real estate-related transaction on any prohibited basis as defined by the Fair Housing Act (24 CFR part 100). Paragraph (b) would prohibit discrimination in any aspect of a credit or other financial service transaction on any prohibited basis as defined by the ECOA (12 CFR 202.2(z)). Paragraph (c) would list examples of lending practices that would be prohibited under § 613.3150. Paragraph (d) would state that nothing in the proposed subpart would change the eligibility requirements imposed by the Farm Credit Act of 1971 and regulations adopted pursuant thereto.

A new § 613.3151, entitled "Nondiscrimination in applications," would be added prohibiting discrimination against an applicant for an eligible loan or other eligible service on any prohibited basis as defined by the ECOA and the Fair Housing Act, to emphasize the importance of promoting the availability of credit to all creditworthy applicants.

A new § 613.3152, entitled "Nondiscriminatory appraisal," would be added prohibiting discrimination in the appraisal of a residential real property on any prohibited basis as defined by the Fair Housing Act.

Section § 613.3170 of the proposed regulations, entitled "Equal housing lender poster," would be amended to

conform to changes in title VIII made by the 1988 Act. The new poster directs Fair Housing Act complainants to contact both HUD and the FCA, and ECOA complainants to contact the FCA. The FCA's proposed new Equal Housing Lender Poster has been approved by HUD under 24 CFR 110.25(b) as a permissible substitute for the poster required by HUD in 24 CFR 110.25(a), and is similar to those approved by HUD for the Office of Thrift Supervision and the Federal Deposit Insurance Corporation.

In conformance with its role as an "arm's-length" regulatory, effective as of the date of publication of the final rule, the FCA will discontinue its practice of providing the Equal Housing Lender Poster to System institutions.

A new § 613.3175, entitled "Complaints," would be added directing discrimination complaints to both HUD and the FCA for processing under the Fair Housing Act and to the FCA for processing under the Equal Credit Opportunity Act.

Technical amendments would be made to the proposed regulations to reference the ECOA, the Fair Housing Act, and HUD's fair housing regulations.

List of Subjects in 12 CFR Part 613

Aged, Agriculture, Banks, banking, Civil rights, Credit, Fair housing, Marital status discrimination, Religious discrimination, Rural areas, Sex discrimination, Signs and symbols.

For the reasons stated in the preamble, part 613 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

1. The authority citation for part 613 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 5.9, 5.17; 12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2243, 2252; 42 U.S.C. 3601 *et seq.*; 15 U.S.C. 1691 *et seq.*; 12 CFR 202, 24 CFR 100, 109 and 110.

2. The table of contents of subpart E is revised to read as follows:

Subpart E—Nondiscrimination in Lending

Sec.

Subpart E—Nondiscrimination in Lending

§ 613.3140 [Removed]

3. Section 613.3140 is removed

4. A new § 613.3145 is added to read as follows:

§ 613.3145 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) *Applicant* means any person who requests or who has received an extension of credit from a creditor and includes any person who is or may become contractually liable regarding an extension of credit.

(b) *Dwelling* means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) *Familial status* means one or more individuals (who have not attained the age of 18 years) being domiciled with:

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(d) *Handicap* means, with respect to a person:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) A record of having such an impairment, or

(3) Being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(e) *Residential real estate-related transaction* means any of the following:

(1) The making or purchasing of loans or providing other financial assistance:

(i) For purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(ii) Secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

5. Section 613.3150 is revised to read as follows:

§ 613.3150 Nondiscrimination in lending and other services.

(a) No Farm Credit institution may discriminate in making credit or other financial services available in a real estate-related transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) No Farm Credit institution may discriminate in any aspect of a credit or other financial service transaction because of:

(1) Race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); or

(2) The fact that all or part of the applicant's income derives from any public assistance program; or

(3) The fact that the applicant has in good faith exercised any right under title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act.

(c) Prohibited practices under this section include, but are not limited to, discrimination in fixing the amount, interest rate, duration or other terms or conditions of any loan or other financial service or in the purchase of loans and securities on the basis of race, color, religion, sex, handicap, familial status (having one or more children under the age of 18), marital status, age (provided the applicant has the capacity to enter into a binding contract) or national origin.

(d) Nothing in this subpart shall be deemed to change the eligibility requirements imposed by the Farm Credit Act of 1971 or any Farm Credit Administration regulation adopted pursuant thereto.

6. New §§ 613.3151 and 613.3152 are added to read as follows:

§ 613.3151 Nondiscrimination in applications.

No Farm Credit institution may discourage or refuse to allow, receive, or consider any application, request, or inquiry regarding an eligible loan or other eligible service or discriminate in imposing conditions upon, or in processing, any such application, request, or inquiry on the basis of the race, color, religion, sex, handicap, familial status, marital status, age (provided the applicant has the capacity to contract), national origin, or on any other basis that may from time to time be prohibited by amendments to title VIII of the Civil Rights Act of 1968 (Fair Housing Act), the Equal Credit Opportunity Act (12 CFR 202.2(z)), and the Department of Housing and Urban

Development's implementing regulations (24 CFR part 100), of any person who:

(a) Makes application for any such loan or other service; or

(b) Requests forms or papers to be used to make application for any such loan or other service; or

(c) Inquires about the availability of such loan or other service.

§ 613.3152 Nondiscriminatory appraisal.

No Farm Credit institution may conduct, use, or rely upon an appraisal of a residential real property in connection with the sale, rental, or financing of any dwelling which discriminates against any person in making available such services, or in the performance of such services, because of race, color, religion, sex, handicap, familial status, or national origin.

7. Section 613.3160 is amended by revising paragraph (a) to read as follows:

§ 613.3160 Nondiscriminatory advertising.

(a) A Farm Credit institution that directly or through third parties engages in any form of advertising shall not use words, phrases, symbols, directions, forms, or models in such advertising which express, imply, or suggest a policy of discrimination or exclusion in violation of the provisions of the Fair Housing Act, the Equal Credit Opportunity Act, or this subpart.

* * * * *

8. Section 613.3170 is revised to read as follows:

§ 613.3170 Equal housing lender poster.

(a) Each Farm Credit institution that makes loans for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling shall post and maintain an Equal Housing Lender Poster in the lobby of each of its offices. The poster shall be in a prominent place readily apparent to all persons seeking such loans.

(b) The Equal Housing Lender Poster shall be at least 11 inches by 14 inches in size, and shall bear the logotype and legend set forth in § 613.3160(b) of this subpart and the following text:

WE DO BUSINESS IN ACCORDANCE WITH FEDERAL FAIR LENDING LAWS

(The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988)

UNDER THE FEDERAL FAIR HOUSING ACT, IT IS ILLEGAL, ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, HANDICAP, OR FAMILIAL STATUS (HAVING CHILDREN UNDER THE AGE OF 18), TO:

- Deny a loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or deny any loan secured by a dwelling; or
- Discriminate in fixing the amount, interest rate, duration, application procedures, or other terms or conditions of such a loan, or in appraising property.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410, 1–800–669–9777 (Toll Free), 1–800–927–9275 (TDD).

For processing under the Federal Fair Housing Act.

AND TO:

Farm Credit Administration, Office of Congressional and Public Affairs, 1501 Farm Credit Drive, McLean, VA 22102–5090, 703–883–4056, 703–883–4444 (TDD).

For processing under Farm Credit Administration Regulations.

UNDER THE EQUAL CREDIT OPPORTUNITY ACT

(The Consumer Credit Protection Act, as amended by the Equal Credit Opportunity Act Amendments of 1976)

IT IS ILLEGAL TO DISCRIMINATE IN ANY CREDIT TRANSACTION:

- On the basis of race, color, national origin, religion, sex, marital status, or age,
- Because income is from public assistance, or
- Because a right was exercised under the Consumer Credit Protection Act.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Farm Credit Administration, Office of Congressional and Public Affairs, 1501 Farm Credit Drive, McLean, VA 22102–5090, 703–883–4056, 703–883–4444 (TDD).

9. A new § 613.3175 is added to read as follows:

§ 613.3175 Complaints.

(a) Complaints regarding discrimination in lending by a Farm Credit institution under the Fair Housing Act shall be referred to the Assistant Secretary for Fair Housing and Equal Opportunity, United States Department of Housing and Urban Development, Washington, DC 20410, and to the Office of Congressional and Public Affairs, Farm Credit Administration, McLean, Virginia 22102–5090.

(b) Complaints regarding discrimination in lending by a Farm Credit institution under the Equal Credit Opportunity Act shall be referred to the Office of Congressional and Public Affairs, Farm Credit Administration, McLean, Virginia 22102–5090.

Dated: January 13, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–1196 Filed 1–15–92; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

22 CFR Part 121

[Public Notice 1553]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule is the result of an advanced notice of proposed rulemaking published in the **Federal Register**, Vol. 56, No. 172, dated September 5, 1991. This proposed rule is intended to amend the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services. Specifically, it intends to amend the U.S. Munitions List by adding a new category XV covering space-related articles and by moving Global Positioning Systems (GPS) receivers from the coverage of categories VIII and XI and placing them under the coverage of a new category. This proposed rule is intended to reduce the burden on exporters in two ways: first, by clarifying which GPS receivers are covered under the U.S. Munitions List (USML), and second, by moving certain GPS receivers to the export licensing jurisdiction of the Department of Commerce.

DATES: Comments must be submitted on or before February 18, 1992.

ADDRESSES: Written comments should be sent to: Michael J. Van Atta, Office of Defense Trade Controls, SA–6, Room 200, U.S. Department of State, Washington, DC 20522–0602, fax (703) 875–6647. Public comments will be made available for public inspection.

FOR FURTHER INFORMATION CONTACT: Michael J. Van Atta or Kenneth M. Peoples, Office of Defense Trade Controls, Department of State, tel. (703) 875–6644, or Peter Rensema, Office of Advanced Technology, Department of State, tel. (202) 647–2433.

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President include removal from the USML of all items contained on the COCOM dual-use list (currently known as the CORE list) unless significant U.S. national security interests would be jeopardized. In implementing this directive, the Department headed an interagency working group which reviewed the coverage of spacecraft and related components and determined that in the time allotted for this exercise, specific items could not be determined for removal. Therefore, in further implementation of the Presidential directive, the Department of State chairs a space technical working group comprised of the Departments of State, Commerce, Defense and other national security agencies to identify COCOM Industrial List (IL) spacecraft and related articles that overlap with the items in category XV of the USML published in the September 5, 1991 notice of advanced rulemaking. This proposed rule on the jurisdiction of GPS receivers is the result of the group's recommendations. It will be followed in the future by other proposed rules as further changes are made to the language published in the **Federal Register** on September 5, 1991. To assist you in understanding this proposed rule, category XV, as published in the September 5 **Federal Register**, is being reprinted as follows:.

[Category XV—Spacecraft Systems and Associated Equipment]

*(a) Spacecraft and associated hardware, including both ground and space elements, which are either specifically designed or modified for military applications. This includes but is not limited to the following:

(1) Remote sensing satellite, earth observation and surveillance satellites, space observation satellites, and their major systems and subsystems that may be used for intelligence and targeting applications, including (but not limited to) cameras and other sensors and their major components (e.g. optics, focal planes, cryocoolers, radars, lasers, imaging radiometers, large aperture antennas, receivers, tuners) specifically designed or modified for use in a spacecraft; space qualified signal processors, and data compression and mass storage devices specifically designed or modified for satellites; and associated equipment for the timely transmission, exploitation and dissemination of data from such satellites.

(2) Communications satellites and their major systems and subsystems specifically designed or modified to provide secure anti-jam capability, include (but not limited to) communications security (COMSEC) and transmission security (TRANSEC) equipment; interference cancellation devices; nulling or steerable spot-beam antennas; spread spectrum or frequency agile signal generation baseband processing equipment; equipment for satellite crosslink; and spaceborne atomic clocks. See also categories XI(b) and XIII(b).

(3) Equipment specifically designed or modified to enhance space system survivability (both ground and space elements), including nuclear, laser, radio-frequency, and kinetic hardening (beyond levels needed for commercial life in the natural environment); microelectronic integrated circuits radiation hardened for space application; decoys; active and passive countermeasures; and warning receivers. See also category XI(a)(8) and category XIII (d) and (e).

(4) Equipment specifically designed or modified for precision navigation capabilities, including receivers incorporating NAVSTAR GPS PPS features or employing encryption/decryption capabilities; differential GPS equipment; null steering antennas, GPS user equipment suitable for use in missiles or remotely piloted vehicles; and GPS satellite simulators.

(5) Equipment specifically designed or modified for space and strategic defense weapons systems (ground-to-space, space-to-space, space-to-ground), including attitude and positive determination, control, and pointing subsystems with precision and stability suitable for weapons direction; high torque attitude control actuators; magnetic suspension devices; spaceborne lasers; high power microwave devices; high power pulsed power supplies; chemical release devices; explosive ordnance other than those suitable only for deployment of stowed appendages or other deployable devices; ECM and ECCM subsystems; and subsystems for command and control of such weapons. See also categories XII(a), XIII(f), and VIII(e).

(b) All other satellites and associated equipment specifically designed or modified for such satellites not enumerated in paragraph (a) of this category, regardless of their missions, unless specifically removed in accordance with the provisions of § 120.5 of this subchapter.

(c) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for the articles in paragraphs (a) and (b) of this category.

(d)(1) Technical data (as defined in § 120.21) and defense services (as defined in § 120.8) directly related to any defense articles enumerated in paragraphs (a) through (c) of this category. (See § 125.4 for exemptions.) Technical data directly related to any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

(2) Technical data as defined in § 120.21 for the design, development, production, or manufacture of spacecraft systems and associated equipment (both military and non-military), regardless of which U.S. Government agency has jurisdiction for the export of the hardware. (See § 125.4 for exemptions.) Technical data directly related to any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

As indicated in our **Federal Register** notice published in September 5, 1991, the line between civil and military spacecraft and related equipment had not been clearly identified. In reviewing specific areas, the Department of State, inconjunction with other concerned agencies has attempted to resolve which articles could be more precisely defined and which coverage overlaps could be eliminated. The first result of this effort is the area of Global Positioning System (GPS) receiving equipment. The interagency technical working group determined, and the Departments of Defense, Commerce and State agreed, that GPS receivers could be more clearly defined by identifying those characteristics of either civil or military GPS receivers. The result of this effort is reflected in the proposed category XV(a)(4) language. The remaining parts of category XV which are reserved will

be the subject of subsequent notices as the working group reaches jurisdictional determinations.

After reviewing the COCOM coverage and the CCL categories 7A05A and 7A25B on GPS receivers, the working group identified a class of GPS receivers which could be distinguished from those GPS receivers which are exclusively military in nature, and which, as the President directed in his order of November 16, 1990, have "significant U.S. national security" concerns. This proposed amendment is intended in subparagraph (4) of category XV(a) to provide guidance and definition in order to distinguish those GPS receivers and associated equipment which are primarily civil in nature and those that are considered primarily military in nature. The Department of State will continue its efforts to identify and resolve overlap of the COCOM dual use items and the USML. Each success will result in publication of a proposed rule clarifying, changing or deleting those paragraphs which are identified in **Federal Register**, Vol. 56, No. 172 dated September 5, 1991 and reserved in this notice of rulemaking.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13191) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, this amendment is being published as a notice of proposed rulemaking in order to provide the public with an opportunity to comment and provide suggestions regarding this proposed rule. The period for submission of comments will close 30 days after publication of this advanced notice of proposed rulemaking. In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1404–0013.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

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

PART 121—THE UNITED STATES MUNITIONS LIST

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

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658).

2. Category XV is added to read as follows:

[Category XV—Spacecraft Systems and Associated Equipment]

*(a) [Reserved]
(1) [Reserved]
(2) [Reserved]
(3) [Reserved]
(4) Global Positioning System (GPS) receiving equipment specifically designed, modified or configured for military use; or GPS receiving equipment with any of the following characteristics:
a. Designed for encryption or decryption (e.g., Y-Code) of GPS precise positioning service (PPS) signals;
b. Designed for producing navigation results above 60,000 feet altitude and at 1,000 knots velocity or greater;
c. Specifically designed or modified for use with a null steering antenna or including a null steering antenna designed to reduce or avoid jamming signals;
d. Designed or modified for use with unmanned air vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km. (NOTE: GPS receivers designed or modified for use with military unmanned air vehicle systems with less capability are considered to be specifically designed, modified or configured for military use and therefore covered under this subparagraph.)

Any GPS equipment not meeting this definition is subject to the jurisdiction of the Department of Commerce (DOC). Manufacturers or exporters of equipment under DOC jurisdiction are advised that the U.S. Government does not assure the availability of the GPS P–Code for civil navigation. It is the policy of the Department of Defense (DOD) that GPS receivers using P-Code without clarification as to whether or not those receivers were designed or modified to use Y-Code will be presumed to be Y-Code capable and covered under this paragraph. The DOD policy further requires that a notice be attached to all P-Code receivers presented for export. The notice must state the following: "ADVISORY NOTICE: This receiver uses the GPS P-Code signal, which by U.S. policy, may be switched off without notice."

(5) [Reserved]
(b) [Reserved]
(c) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraph (a)(4) of this category.
(d) [Reserved]
(1) [Reserved]
(2) [Reserved]

Dated: December 19, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

[FR Doc. 92–1181 Filed 1–15–92; 8:45 am]

BILLING CODE 4710–25–M

22 CFR Part 121

[Public Notice 1552]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations implementing section 38 of the Arms Export Control Act which governs the export of defense articles and defense services. This proposed rule is intended to reduce the burden on munitions exporters by eliminating the more stringent restrictions placed upon these vessels, components, and parts when designated as Significant Military Equipment (SME).

DATES: Comments must be submitted on or before February 18, 1992.

ADDRESSES: Written comments should be sent to: LCDR Nelson R. Hines, PM/DTC, SA–6, room 228, Department of State, Washington, DC 20520, or sent by facsimile to (703) 875–6647. Public comments will be made available for public inspection.

FOR FURTHER INFORMATION CONTACT: LCDR Nelson R. Hines, Office of Defense Trade Controls, Department of State, (703) 875–7045.

SUPPLEMENTARY INFORMATION: The proposed rule that follows amends § 121.1, Category VI, which defines vessels of war and special naval equipment. It would establish certain patrol vessels, and special naval equipment, components and parts residing on the United States Munitions List (USML) as non-Significant Military Equipment. After consultation with the Department of Defense the Department believes that certain patrol vessels and special naval equipment, components and parts, described in this proposed rule change, no longer warrant special export controls as they do not meet the guidelines established in § 120.19(a). In addition, a new paragraph (g) is added to move regulated technical data and defense services for articles in this category which are currently covered under Categories XVIII and XIX to this category.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, this amendment is being published as a proposed rule in order to provide the public with an opportunity to comment and provide advice and suggestions

regarding the proposal. The period for submission of comments will close thirty days after publication of this proposed rule. In addition, this proposed rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405–0013.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

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

PART 121—THE UNITED STATES MUNITIONS LIST

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

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. In § 121.1, Category VI, paragraphs (a), (b), and (c) are revised and paragraphs (f) and (g) are added to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category VI—Vessels of War and Special Naval Equipment.

*(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels (except those described in paragraph (c) of this category), auxiliary vessels and service craft, experimental types of naval ships and any vessels specifically designed or modified for military purposes. (See § 121.15.)

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

(c) Patrol vessels which do not exceed 1300 tons full load, or 180 feet (55 meters) at the water line, and which are unarmed and without mounting surfaces for weapons systems more significant than .50 caliber machine guns or equivalent.

* * * * *

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

(g) Technical data (as defined in § 120.21) and defense services (as defined in § 120.8) directly related to the defense articles enumerated in paragraphs (a) through (f) of this category. (See § 125.4 for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

* * * * *

Dated: December 13, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

[FR Doc. 92–1182 Filed 1–15–92; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

North Carolina State Plan; Petition to Withdraw Federal Approval

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of availability of special evaluation report of North Carolina state plan; extension of comment period.

SUMMARY: This notice announces the availability for public inspection of a special evaluation report of the North Carolina State plan by the Occupational Safety and Health Administration. This notice also extends the period for public comment on the petition for withdrawal of federal approval of the North Carolina State plan, previously filed by the AFL–CIO.

DATES: Comments must be postmarked by March 9, 1992.

ADDRESSES: Four copies of written comments must be sent to the Docket Office, Docket No. T–24, U.S. Department of Labor, room N–2626, 200 Constitution Avenue, NW., Washington, DC 20210 (Telephone: 202–523–7894). Comments of 10 or fewer pages in length may also be transmitted by facsimile to 202–523–5046 (FTS 523–5046), provided that the original and three copies of the comment are sent to the Docket Office thereafter.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, room N–3647, 200 Constitution Avenue, NW., Washington, DC, (202) 523–8148.

SUPPLEMENTARY INFORMATION: The American Federation of Labor and Congress of Industrial Organization (AFL–CIO) in a letter dated September 11, 1991, petitioned the Occupational Safety and Health Administration (OSHA) to withdraw federal approval of the North Carolina State occupational safety and health plan under section 18(f) of the Occupational Safety and Health Act and 29 CFR part 1955. In a previous **Federal Register** notice which appeared on September 30, 1991, 56 FR 49444, OSHA announced the filing of the AFL–CIO plan withdrawal petition and requested public comments on the issues raised in the petition, as well as on the general effectiveness of the North Carolina State plan within 90 days.

The September 30 **Federal Register** document also gave notice of a comprehensive evaluation of the North Carolina State plan, to be conducted by OSHA currently with the 90 day comment period on the AFL–CIO petition. That evaluation has now been completed. A copy of OSHA's report of that evaluation as well as copies of all comments received by OSHA in response to the AFL–CIO petition, may be inspected and copied during normal business hours, at the following locations:

Docket Office, Docket No. T–24, U.S. Department of Labor-OSHA, 200 Constitution Avenue, NW., room N2626, Washington, DC 20210, Telephone: (202) 523–7894.

Regional Office, U.S. Department of Labor-OSHA, 1375 Peachtree Street, NE., suite 587, Atlanta, Georgia 30367, Telephone: (404) 347–3573.

Area Office, U.S. Department of Labor-OSHA, Century Station, 300 Fayetteville Mall, room 104, Raleigh, North Carolina 27601, Telephone: (919) 856–4770.

In separate letters dated December 20, 1991, the United Food and Commercial Workers International Union and the North Carolina State AFL–CIO requested that the comment period on the AFL–CIO plan withdrawal petition be extended, and in a letter dated December 23, the AFL–CIO national office requested a 60 day extension of the comment period to allow interested parties to review federal OSHA's evaluation of the North Carolina plan and other recent state and federal actions which may have a bearing on the issues raised in the petition. In response to those requests, the comment period on the AFL–CIO petition to initiate proceedings to withdraw federal OSHA approval of the North Carolina State plan will remain open for an additional 60 days and will close on March 9, 1992.

Signed at Washington, DC this 10th day of January, 1992.

Gerard F. Scannell,

Assistant Secretary.

[FR Doc. 92–1162 Filed 1–15–92; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[CGD 91–034/90–068]

RIN 2115–AE81 and 66

Vessel Response Plans and Carriage and Inspection of Discharge-Removal Equipment

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings of negotiated rulemaking committee on oil spill response plans and finalization of committee membership.

SUMMARY: As required by the Federal Advisory Committee Act (FACA), the Coast Guard is giving notice of the schedule of open meetings of the Oil Spill Response Plan Negotiated Rulemaking Committee to negotiate issues related to oil spill response plans. This notice also cancels the meeting previously announced for January 21–23, 1992, and makes two additions to the list of committee participants.

DATES: The schedule of meetings of the negotiated rulemaking committee is as follows: January 30–31, 1992, February 13–14 and 27–28, 1992, and March 12–13, 1992. The meetings will be held between 8:30 a.m. and 5 p.m. EST, unless a notice is published prior to the date canceling the meeting.

ADDRESSES: The meetings will be held at DOT Headquarters, 400 Seventh Street SW., Washington, DC 20590. Meeting rooms have not yet been assigned.

FOR FURTHER INFORMATION CONTACT: Room numbers for the committee meetings will be available at least seven days prior to the meetings on a recorded message at (202) 267–6739. For information concerning the substantive aspects of oil spill response plans and the carriage of removal equipment by tank vessels, contact LCDR Glenn Wiltshire, Project Manager, OPA 90 Staff (G–MS-1), at (202) 267–6740 between 7 a.m. and 3:30 p.m., Monday through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 1992, the Coast Guard published a notice of establishment of an advisory committee for regulatory negotiation and notice of meetings (57 FR 1139). The notice announced the establishment of the negotiated rulemaking committee to develop a report, including a recommended proposal and final rule, concerning tank vessel oil spill response plans and carriage of discharge-removal equipment. The notice lists the members selected for the committee and the times and places of the January meetings. The notice also references prior requests by the Coast Guard for public comment on the use of negotiated rulemaking to assist the Coast Guard in developing regulations required by sections 311(j)(5) and (j)(6)(B) of the Federal Water Pollution Control Act (33 U.S.C. 1321 *et seq.*).

Meetings of Committee

The Oil Spill Response Plan Negotiated Rulemaking Committee has cancelled its meeting that was previously scheduled for January 21–23, 1992. The next meeting of the committee is being held on January 30, 1992 as indicated above under DATES.

All committee meetings will be open to the public, subject to space availability; however, only the listed parties may participate as members. In accordance with the requirements of FACA, the Coast Guard will keep minutes of all committee meetings. These minutes will be placed in the public dockets (CGD 91–034/90–068) for this rulemaking and will be available for public inspection and copying at room 3406, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

Working groups of committee members will be meeting on the two days prior to the committee meeting to collect information, analyze relevant issues and facts, and draft position papers for deliberation by the full committee at the scheduled meeting.

In order to meet the stringent statutory deadlines imposed for the issuance of these regulations by OPA 90, the notice of the committee meetings for January, February, and March 1992 are published at this time. Notice of any changes to the meeting schedule, as well as notice of any additional meetings, will be published in the **Federal Register**.

Members of the Committee

The Coast Guard announced the membership of the committee in the notice of establishment of advisory committee for regulatory negotiation and notice of meetings. The membership was finalized at the first meeting with the addition of the State of Michigan and the Cook Inlet Regional Citizens' Advisory Committee as members. The member organizations are listed according to the interests which the Coast Guard identifies as being significantly affected by this rulemaking, based on the notice of intent and the comments submitted in response.

Environmental/Public Interest Groups

Natural Resources Defense Council
Prince William Sound Regional Citizens' Advisory Council
Cook Inlet Regional Citizens' Advisory Council

Response Contractors

Marine Spill Response Corporation
National Response Corporation
Spill Control Association of America
Remedial Contractors Institute

State Governments

State of California
State of Louisiana
State of Maryland
State of Michigan

Tank Vessel Operators/Cargo Interests

American Institute of Merchant Shipping
Transportation Institute
International Association of Independent Tanker Owners
International Tanker Owners Pollution Federation
American Waterways Operators
National Ocean Industries Association
Offshore Marine Service Association
ARCO Marine Inc.
Oil Companies International Marine Forum
American Petroleum Institute

Oil Handling Facilities

American Association of Port Authorities
Independent Liquid Terminals Association
Louisiana Offshore Oil Port Inc.

Shipboard Operating Personnel

Marine Engineers Beneficial Association/National Maritime Union District One

Federal Government

U.S. Coast Guard

Dated: January 13, 1992.

D.F. Sheehan,

Acting Deputy Chief, Office of Marine Safety, Security and Environmental Protection, By Direction of the Commandant.

[FR Doc. 92–1290 Filed 1–14–92; 12:20 pm]

BILLING CODE 4910–14–M

Research and Special Programs Administration

49 CFR Part 175

[Docket No. HM-184F; Notice 92-1]

RIN-2137-AB99

Implementation of the International Civil Aviation Organization's Technica Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice proposes to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) by adding four provisions that are in the current (1991–1992) edition of the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transportation of Dangerous Goods by Air. These provisions were inadvertently omitted in a previous notice published under Docket HM–184F. This amendment is necessary to facilitate the continued transport of hazardous materials in international commerce by aircraft, pursuant to decisions taken by the ICAO Council regarding implementation of Annex 18 to the Convention on International Civil Aviation.

DATES: Comments must be received by February 18, 1992.

ADDRESSES: Address comments to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the docket and be submitted, if possible, in five copies. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the docket number (i.e., Docket HM–184F). The Dockets Unit is located in room 8419 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590–0001. Telephone (202) 366–5046. The public dockets may be reviewed between the hours of 8:30 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. (202) 366–0656.

SUPPLEMENTARY INFORMATION: On November 7, 1990, RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (55 FR 46839). RSPA proposed to authorize, under certain conditions and with certain limitations, hazardous materials to be packaged, marked, labeled, classified, described and certified on shipping papers in accordance with the 1991–1992 edition of the ICAO Technical Instructions, and to be offered, accepted and transported by aircraft within the United States and aboard aircraft of United States registry anywhere in air commerce. It was necessary that this NPRM be published in order to provide consistency between the Hazardous Materials Regulations (HMR) and the ICAO Technical Instructions, which have become the basic standard applied to the transport of hazardous materials by aircraft worldwide. Three changes were proposed in the November 1990 NPRM to reflect amendments incorporated in the 1991–1992 edition of the ICAO Technical Instructions; however, four other changes were inadvertently omitted from the NPRM. The purpose of this rulemaking is to propose that these additional changes be made to the HMR.

Section-by-Section Review

Section 175.10

Two new paragraphs would be added to this section. A new paragraph (a)(24) would be added regarding heat-producing articles (i.e., underwater torches and soldering equipment). With the approval of the aircraft operator, these articles may be carried in carry-on baggage only, provided the heat producing component or energy source has been removed. This provision is intended to eliminate fires in carry-on baggage due to the inadvertent activation of such articles.

A new paragraph (a)(25) would be added regarding small oxygen generators. With the approval of the aircraft operator, a small oxygen generator, one per person, may be carried as checked baggage only, provided it meets certain requirements. This provision is intended to permit the transport of an oxygen generator for personal use.

Section 175.701

Minor editorial changes would be made in paragraph (b)(1). Paragraph (b)(2) would be revised to specify that the prescribed minimum separation distance limits apply to the distances between radioactive materials and the passengers and crew. A new paragraph (b)(3) would be added to specify separation distances between radioactive materials and animals.

Section 175.702

Paragraph (b)(2)(i) would be revised to extend the provisions for separation distances to include overpacks and freight containers containing radioactive materials, and to reduce the prescribed separation distances between animals and radioactive materials.

Administrative Notices

A. Executive Order 12291 and Administrative Notices

The RSPA has determined that this rulemaking: (1) Is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*) The proposals in this document reflect changes introduced in the 1991–1992 edition of the ICAO Technical Instructions. Their anticipated economic impacts are so minimal that preparation of a regulatory evaluation is not considered necessary. An earlier regulatory evaluation on implementation of the ICAO Technical Instructions was prepared for Docket HM–184. A copy of that regulatory evaluation is available for review in Docket HM–184F.

B. Executive Order 12612

This proposed action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. This proposal has no substantial direct impact of the States, on Federal-State relationship, or on the distribution of power and responsibilities among levels of government. Therefore, this proposed rulemaking contains no policies with Federalism implications as defined in Executive Order 12612.

c. Regulatory Flexibility Act

Based on limited information concerning the size and nature of entities likely to be affected by this proposed rule, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials,

Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 175 would be amended as follows:

PART 175—CARRIAGE BY AIRCRAFT

1. The authority citation for part 175 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1807, 1808; 49 CFR part 1.

2. In § 175.10, paragraphs (a)(24) and (a)(25) would be added to read as follows:

§ 175.10 Exceptions.

(a) * * *

(24) With the approval of the operator of the aircraft, heat producing articles (e.g., battery-operated equipment such as underwater torches and soldering equipment which, if accidentally activated, will generate extreme heat and can cause fire) may be carried in carry-on baggage only. The heat producing component, or the energy source, must be removed so as to prevent unintentional functioning during transport.

(25) With the approval of the operator(s) and as checked baggage only, a small oxygen generator for personal use, one per person, that meets the following requirements:

(i) The generator, without its packaging, must be capable of withstanding a 1.8 m (5.9 feet) drop test onto a rigid, nonresilient, flat and horizontal surface, in the position most likely to cause damage, without loss of its contents and without actuation;

(ii) The generator must be equipped with an actuating device with at least two positive means of preventing unintentional actuation;

(iii) When actuated at a temperature of 20 °C (68 °F) and the generator well insulated, the temperature of any external surface of the generator must not exceed 100 °C (212 °F);

(iv) The generator must be in the manufacturer's original packaging and this must include a sealed outer wrapping or other means which can be taken as clear evidence that the generator has not been tampered with; and

(v) The generator packaging must be marked to indicate that the package meets the requirements of this paragraph (e.g., conforms with 49 CFR 175.10(a)(25)).

3. In § 175.701, paragraph (b)(1) would be amended by removing the reference "paragraph (b)(2)" each place it appears, and adding in its place "paragraphs (b)(2) and (b)(3)"; the text preceding the table in paragraph (b)(2) would be revised and a new paragraph (b)(3) would be added to read as follows:

§ 175.701 Separation distance requirements for packages containing Class 7 (radioactive) materials in passenger-carrying aircraft.

* * * * *

(b) * * *

(2) The following table prescribes minimum separation distances that must be maintained in passenger-carrying aircraft between Class 7 (radioactive) materials labeled Radioactive Yellow-II or Radioactive Yellow-III and passengers and crew.

* * * * *

(3) Class 7 (radioactive) materials in packages, overpacks or freight containers labeled Radioactive Yellow-II or Radioactive Yellow-III must be separated from live animals by a distance of at least 0.5 meters (20 inches) for journeys not exceeding 24 hours, and by a distance of at least 1.0 meters (39 inches) for journeys longer than 24 hours.

* * * * *

4. In § 175.702, paragraph (b)(2)(i) would be revised to read as follows:

§ 175.702 Requirements for carriage of packages containing Class 7 (radioactive) materials in a cargo aircraft only.

* * * * *

(b) * * *

(2) * * *

(i) The separation distance between the surfaces of the Class 7 (radioactive) materials packages, overpacks or freight containers and any space occupied by humans is at least 9 meters (30 feet) and between live animals is at least 0.5 meters (20 inches) for journeys not exceeding 24 hours; at least 1.0 meters (39 inches) for journeys longer than 24 hours.

* * * * *

Issued in Washington, DC on January 8, 1992, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety

[FR Doc. 92–899 Filed 1–15–92; 8:45 am]

BILLING CODE 4910–60–M

Notices

Federal Register
Vol. 57, No. 11
Thursday, January 16, 1992

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

January 10, 1992.

The Department of Agriculture has submitted to OMB for review the following proposals 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, extensions, 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

- *Cooperative State Research Service*

Grant Application Kit—Facilities Projects.

Forms CSRS–850, CSRS–851, CSRS–852, CSRS–853, and CSRS–854.

Annually.

Non-profit institutions; 57 responses; 990 hours.

Evelyn J. O'Connor-Miller (202) 401–6466.

Extension

- *Federal Crop Insurance Corporation*

Texas Citrus Grove Inspection Report.

FCI–19–C.

On occasion.

Individuals or households; Farms; 25,000 responses; 37,500 hours.

Bonnie L. Hart (202) 254–8393.

Reinstatement

- *Farmers Home Administration*

Form FmHA 410–8, Applicant Reference Letter (A Request for Credit Reference).

Form FmHA 410–8.

On occasion.

Business or other for-profit; Small business or organization; 79,500 responses; 26,235 hours.

Jack Holston (202) 720–9736.

7 CFR 1822–G, Housing Site Loan Policies, Procedures, and Authorizations.

Recordkeeping, On occasion.

State or local governments; Small business or organizations; 8 responses; 48 hours.

Jack Holston (202) 720–2736.

- *Animal and Plant Health Inspection Service*

Federal Plant Pest and Noxious Weed Regulations.

PPQ Forms 519, 525, 526 and 526–1.

On occasion.

Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; 9,817 responses; 911 hours.

Philip Lima (301) 436–8677.

New Collection

- *Animal and Plant Health Inspection Service*

Imported Fire Ant.

PPQ 523.

Recordkeeping; Semi-annually.

Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 39,441 responses; 26,695 hours.

Mike Stefan (301) 436–8247.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 92–1135 Filed 1–15–92; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 91–190]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The assessments provide a basis for the conclusion that the field testing of these genetically engineered organisms will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on these findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Specialist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protections, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write Clayton Givens at this same address. The documents should be requested under the permit numbers listed below.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered

organisms and products that are plant pests or that there is reasons to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit applications, APHIS assessed the impact on the environment of releasing the organisms under the conditions described in the permit applications. APHIS concluded that the issuance of the permits listed below will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of the following permits to allow the field testing of genetically engineered organisms:

Permit No.	Permittee	Date issued	Organism	Field test location
91-294-02 (renewal of permit #90-311-01, issued on 03-12-91).	Frito-Lay Incorporated	12-04-91	Potato plants genetically engineered to over-express a metabolic enzyme, to reduce cold-sensitive sweetening in potato tubers.	Oneida County, Wisconsin.
91-268-01	Calgene, Incorporated	12-17-91	Tomato plants genetically engineered to express an antisense polygalacturonase (PG) gene, for delayed ripening.	Riverside County, California.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 10th day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-1191 Filed 1-15-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket 91-192]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 21 applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, United States Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of these documents by writing to the person listed under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Specialist, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application Number	Applicant	Date Received	Organism	Field Test Location
91-326-01	Monsanto Agricultural Company.	11-22-91	Tomato plants genetically engineered to express a coat protein of tomato yellow leaf curl virus (TYLCV) for resistance to TYLCV.	Lee County, Florida.

—Continued

Application Number	Applicant	Date Received	Organism	Field Test Location
91-326-02	Frito-Lay, Incorporated	11-22-91	Potato plants genetically engineered to express a coat protein of potato leaf roll virus (PLRV) for resistance to PLRV.	Oneida County, Wisconsin.
91-326-03	Monsanto Agricultural Company.	11-22-91	Tomato plants genetically engineered to express a gene that modifies the ripening process.	Lee County, Florida.
91-329-01	Calgene, Incorporated	11-25-91	Cotton plants genetically engineered to express a nitrilase enzyme to confer tolerance to the herbicide bromoxynil.	Burleson County, Texas.
91-329-02	Calgene, Incorporated	11-25-91	Cotton plants genetically engineered to express a nitrilase enzyme to confer tolerance to the herbicide bromoxynil.	Desha and Lee Counties, Arkansas; Tensas Parish, Lousiana; Pemiscot County, Missouri; Burleson County, Texas.
91-329-03	Calgene, Incorporated	11-25-91	Cotton plants genetically engineered to express a nitrilase enzyme to confer tolerance to the herbicide bromoxynil.	Limestone County, Alabama; Sumter County, Georgia; Washington County, Mississippi; Pickens County, South Carolina; Gibson County, Tennessee.
91-329-04	Calgene, Incorporated	11-25-91	Cotton plants genetically engineered to express a nitrilase enzyme to confer tolerance to the herbicide bromoxynil.	Wayne County, North Carolina.
91-333-02	Calgene, Incorporated	11-29-91	Cotton plants genetically engineered to express a nitrilase enzyme to confer tolerance to the herbicide bromoxynil.	Washington County, Mississippi.
91-333-03	Calgene, Incorporated	11-29-91	Cotton plants genetically engineered to express a *Bacillus thuringiensis* subsp. *kurstaki* delta-endotoxin protein for resistance to lepidopteran insects.	Washington County, Mississippi.
91-343-01	Crop Genetics International.	12-09-91	Corn plants containing *Clavibacter xyli* subsp. *cynodontis* genetically engineered to express a *Bacillus thuringiensis* subsp. *kurstaki* strain HD-73 delta-endotoxin protein for resistance to European corn borer (*Ostrinia nubilalise*).	Queen Anne's County, Maryland; Clay County, Nebraska.
91-343-02	Pioneer Hi-Bred International, Incorporated.	12-09-91	Alfalfa plants genetically engineered to express coat proteins of the alfalfa mosaic virus (AMV) and the cauliflower mosaic virus (CaMV) for resistance to AMV.	Yolo County, California; Polk County, Iowa; Lancaster County, Pennsylvania; Franklin County, Washington; Columbia County, Wisconsin.
91-346-01	Calgene, Incorporated	12-12-91	Rapeseed plants genetically engineered to express anti-sense desaturase and thioesterase oil modification genes.	Huron, Missaukee, and Presque Isle Counties, Michigan.
91-346-02	Pioneer Hi-Bred International, Incorporated.	12-12-91	Soybean plants genetically engineered to express methionine- and cysteine-rich seed storage proteins from Brazil nut.	Salinas, Puerto Rico.
91-347-01	Monsanto Agricultural Company.	12-13-91	Cotton plants genetically engineered to overproduce the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and/or a metabolizing enzyme for tolerance to the herbicide glyphosate.	Baldwin County, Alabama.
91-347-02	Monsanto Agricultural Company.	12-13-91	Cotton plants genetically engineered to express a *Bacillus thuringiensis* subsp. *kurstaki* strains HD-1 and HD-73 delta-endotoxin protein for lepidopteran insect resistance.	Baldwin County, Alabama; Pinal and Yuma Counties, Arizona; Jefferson County, Arkansas; Kern County, California; Tift County, Georgia; Bossier and Tensas Parishes, Louisiana; Oktibbeha, Leflore, Washington, and Bolivar Counties, Mississippi; Darlington County, South Carolina; Hale, Burleson, Refugio, Hidalgo, Nueces, and Floyd Counties, Texas.
91-347-03	Monsanto Agricultural Company.	12-13-91	Cotton plants genetically engineered to express a *Bacillus thuringiensis* subsp. *kurstaki* strains HD-1 and HD-73 delta-endotoxin protein for lepidopteran insect resistance.	Onslow and Chowan Counties, North Carolina.
91-350-01	University of Idaho	12-16-91	Potato plants genetically engineered to express poty-virus- and luteo-virus-derived genes to obtain resistance to potato virus Y (PVY) or potato leaf roll virus (PLRV).	Canyon County, Idaho.
91-352-01	Calgene, Incorporated	12-18-91	Rapeseed plants genetically engineered to express an anti-sense desaturase gene to modify the fatty acid composition of the seeds.	Presque Isle and Kalkaska Counties, Michigan.
91-352-02	Pioneer Hi-Bred International, Incorporated.	12-18-91	Alfalfa plants genetically engineered to express the coat protein gene of the alfalfa mosaic virus (AMV) for resistance to AMV.	Franklin County, Washington.
91-352-03	Frito-Lay, Incorporated	12-18-91	Potato plants genetically engineered to express resistance to potato virus Y (PVY).	Oneida County, Wisconsin.
91-352-04	Frito-Lay, Incorporated	12-18-91	Potato plants genetically engineered to express patho-genesis-related proteins for resistance to late blight of potato.	Oneida County, Wisconsin.

Done in Washington, DC, this 10th day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–1192 Filed 1–15–92; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Grand Island Advisory Commission; Meeting

AGENCY: Forest Service, USDA.

ACTION: Grand Island Advisory Commission Meeting.

SUMMARY: The Grand Island Advisory Commission will meet on February 2 and 3 at the Munising Ranger District Office in Munising, Michigan. The meeting will begin at 1 p.m. on Sunday (February 2). An agenda for the two-day meeting will consist of: The review of alternatives and environmental effects; and an update from the Core Team regarding progress on the Draft EIS.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions about this meeting to Art Easterbrook, Staff Officer, Hiawatha National Forest, 2727 N. Lincoln Road, Escanaba, MI 49829, (906) 786–4062.

Dated: January 10, 1992.

William F. Spinner,

Forest Supervisor.

[FR Doc. 92–1159 Filed 1–15–92; 8:45 am]

BILLING CODE 3410–11–M

Rural Development Administration

Establishment of a New Agency in the Department of Agriculture

AGENCY: Rural Development Administration, USDA.

ACTION: Notice.

SUMMARY: The Department of Agriculture is announcing the establishment of a new agency entitled the Rural Development Administration (RDA). This Agency will assume the responsibility for the Community and Business Programs formerly the responsibility of the Farmers Home Administration (FmHA). Regulations of RDA will be found in 7 CFR chapter XLII, parts 4200–4299.

FOR FURTHER INFORMATION CONTACT: Dallas R. Sweezy, Director of Legislative and Public Affairs, Farmers Home Administration, 202–720–6903.

SUPPLEMENTARY INFORMATION: In accordance with title XXIII of the Food, Agriculture, Conservation and Trade Act of 1990 and technical amendments, the Department of Agriculture is establishing a new Agency to administer its rural development programs. The primary initial impact will be the transfer of responsibility for the Community and Business programs currently in the Farmers Home Administration to the Rural Development Administration.

Borrowers and potential applicants are advised that during the interim period they should continue to contact the FmHA representative that has handled the Community and Business programs in the past. A Memorandum of Understanding has been executed by the Rural Development Administration and the Farmers Home Administration in which FmHA agrees to continue to make and service loans and provide all necessary support services to RDA until further notice.

Dated: January 8, 1992.

Walter E. Hill,

Acting Administrator, Rural Development Administration.

[FR Doc. 92–1136 Filed 1–15–92; 8:45 am]

BILLING CODE 3410–07–M

Soil Conservation Service

Gooseneck Creek Critical Area Treatment RC&D Measure, New York

AGENCY: Soil Conservation Service, Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Gooseneck Creek Critical Area Treatment RC&D Measure, Cattaraugus County, New York.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, room 771, Syracuse, New York 13261–7248, telephone (315) 423–5521.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

This measure concerns a plan to provide for the installation of heavy rock rip rap on 110 feet of streambank adjacent to a county highway along with the placement of two rock channel stabilization keys, a rock chute, and the establishment of permanent vegetation on all disturbed areas along Gooseneck Creek in Cattaraugus County, New York.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Basic data developed during the environmental assessment is on file and may be reviewed by contacting Paul A. Dodd. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Dated: December 20, 1991.

Paul A. Dodd,

State Conservationist.

[FR Doc. 92–1170 Filed 1–15–92; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Subcommittee on Export Administration of the President's Export Council; Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration will be held February 7, 1992, 1:30 p.m., U.S. Department of Commerce, Herbert C. Hoover Building, room 4830, 14th and Constitution Avenue NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

General Session

Status reports by Task Force Chairmen, and update on Export Administration initiatives.

Executive Session

Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Act of 1979, as amended.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 17, 1985, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC, (202) 377–4217. For further information, contact Ms. Betty A. Ferrell (202) 377–2583.

Dated: January 10, 1992.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 92–1202 Filed 1–15–92; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket 84–91]

Foreign-Trade Zone 130—Blaine, WA; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Bellingham of Whatcom County, Bellingham, Washington, grantee of FTZ 130, located in Blaine, Washington, requesting authority to extend zone status (removal of time restriction) at the Cambridge Industrial Park zone site in Blaine. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 6, 1991.

FTZ 130 was approved on September 4, 1986 (Board Order 335, 51 FR 32238, 9/10/86), and currently consists of a site (24 acres) adjacent to Blaine Municipal Airport, and a site (3 acres) at the Cambridge Industrial Park, 1122 Fir Avenue, Blaine, Washington, owned by the Cambridge Equipment Company. In 1989, the Cambridge site was granted temporary zone status (to 3/31/93) through a boundary modification (A–34–89, 12/6/89 and A–28–91, 10/28/91).

The grantee now requests authority to extend zone status at the Cambridge site on a permanent basis. The proposal also includes a request to restore zone status to parcel (3 acres) that was deleted from the Airport site as part of the boundary modification action for the Cambridge site.

No manufacturing requests are being made at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Daniel C. Holland, District Director, U.S. Customs Service, Pacific Region, 1000 Second Avenue, suite 2200, Seattle, Washington 98104–1049; and, Colonel Walter J. Cunningham, District Engineer, U.S. Army Engineer District Seattle, P.O. Box 3755, Seattle, Washington 98124–2255.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before March 10, 1992.

A copy of the application is available for inspection at each of the following locations:

U.S. Customs Service, Pacific Region, P.O. Box 280, Pacific Highway Station, Blaine, Washington 98230.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: January 10, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–1203 Filed 1–15–92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A–428–604]

Certain Forged Steel Crankshafts From Germany; Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, Consideration of Revocation, and Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review, consideration of revocation, and intent to revoke antidumping duty order.

SUMMARY: We preliminarily determine that parties are no longer interested in the antidumping duty order on certain forged steel crankshafts from Germany. We therefore intend to revoke the order. The revocation will apply to all shipments entered, or withdrawn from warehouse, for consumption on or after September 1, 1991. We invite interested parties to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: January 16, 1992.

FOR FURTHER INFORMATION CONTACT: John R. Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 1987, the Department of Commerce (the Department) published in the **Federal Register** (52 FR 35751) an antidumping duty order on certain forged steel crankshafts from Germany. On September 26, 1991, Thyssen Umformtechnik, a German manufacturer, requested revocation of this order based on changed circumstances, because another German crankshaft manufacturer, Krupp Gerlach Crankshaft Company, has acquired the crankshaft manufacturing facilities of the petitioner. On October 1, 1991, the Wyman-Gordon Company, the petitioner, informed the Department that it was no longer interested in the antidumping duty order on certain forged steel crankshafts from Germany.

Scope of the Review

Imports covered by this review are shipments of certain forged steel crankshafts. The term "crankshafts", as used in this review, includes forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined.

These products are currently classifiable under items 8483.10.10.10, 8483.10.10.30, 8483.10.30.10, and 8483.10.30.50 of the Harmonized Tariff Schedule (HTS). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or more than 750 pounds are subject to this review.

HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This "changed circumstances" administrative review covers all producers/exporters of the subject merchandise produced in Germany and all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1991.

Preliminary Results of Review and Intent To Revoke Antidumping Duty Order

Pursuant to sections 751 (b) and (c) of the Tariff Act of 1930 (the Tariff Act) and §§ 353.22(f) and 353.25(d) of the Department's regulations, the Department may revoke an antidumping duty order if it concludes that "changed circumstances" have arisen such that the order is no longer of interest to interested parties.

We preliminarily determine that the petitioner's affirmative statement of no further interest in this antidumping duty order provides the Department with a reasonable basis to believe that changed circumstances sufficient to warrant revocation exist. Therefore, we preliminarily determine to revoke the order covering certain forged steel crankshafts from Germany.

We are hereby notifying the public of our preliminary determination to revoke the antidumping duty order on certain forged steel crankshafts from Germany. If this preliminary determination to revoke the antidumping duty order is made final, it will be effective on September 1, 1991.

This revocation will apply to all shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1991. We selected this date as the effective date of the revocation in accordance with section 751(c) of the Tariff Act (19 U.S.C. section 1675(c)), because these entries are the only ones that have not been liquidated and are not subject to final results of an administrative review.

We, therefore, intend to instruct the U.S. Customs Service to liquidate all unliquidated entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1991, without regard to antidumping duties. We will instruct the U.S. Customs Service to refund with interest any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this administrative review.

Interested parties may request a hearing within 10 days of the date of publication of this notice. Any hearing, if requested, will be held no less than 44 days after the date of publication of this notice. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs, and rebuttal to written comments, limited to issues raised in those case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, and its decision on revocation, after the hearing, if any, and after its analysis of any written comments.

This review, intent to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. sections 1675 (b) and (c)) and 19 CFR 353.22(f) and 353.25(d) (1991).

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1204 Filed 1-15-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-602]

Certain Forged Steel Crankshafts From the United Kingdom; Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, Consideration of Revocation, Intent To Revoke Antidumping Duty Order, and Preliminary Termination of Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review, consideration of revocation, intent to revoke antidumping duty order, and preliminary termination of administrative review.

SUMMARY: We preliminarily determine that parties are no longer interested in the antidumping duty order on certain forged steel crankshafts from the United Kingdom. We therefore intend to revoke the order. The revocation will apply to all shipments entered, or withdrawn from warehouse, for consumption on or after September 1, 1989. We invite interested parties to comment on these preliminary results, intent to revoke, and preliminary termination of the administrative review.

EFFECTIVE DATE: January 16, 1992.

FOR FURTHER INFORMATION CONTACT: John R. Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 1990, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain forged steel crankshafts from the United Kingdom (52 FR 35467, September 21, 1987).

The review covers one respondent, United Engineering & Forging (UEF), and the period September 1, 1989 through August 31, 1990. On October 1, 1991, the Wyman-Gordon Company, the petitioner, informed the Department that, because it has sold its domestic crankshaft manufacturing facilities to a German crankshaft producer, it is no longer a domestic manufacturer of crankshafts, and, therefore, it is no longer interested in the proceeding.

On October 18, 1991, UEF requested revocation of the order on crankshafts from the United Kingdom based on changed circumstances. UEF asserts the changed circumstances consist of the fact that Wyman-Gordon, the sole petitioner in this proceeding, is no longer an interested party.

Scope of the Review

Imports covered by this review are shipments of certain forged steel crankshafts. The term "crankshafts", as used in this review, includes forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined.

These products are currently classifiable under items 8483.10.10.10, 8483.10.10.30, 8483.10.30.10, and 8483.10.30.50 of the Harmonized Tariff Schedule (HTS). Neither case crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or more than 750 pounds are subject to this review. HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This "changed circumstances" administrative review covers all producers/exporters of the subject merchandise and all shipments of this merchandise to the United States entered, or withdrawn from warehouse, for consumption on or after September 1, 1989.

Preliminary Results of Review and Intent To Revoke Antidumping Duty Order

Pursuant to sections 751 (b) and (c) of the Tariff Act of 1930 (the Tariff Act), and §§ 353.22(f) and 353.25(d) of the Department's regulations, the Department may revoke an antidumping duty order if it concludes that "changed circumstances" have arisen such that the order is no longer of interest to interested parties (19 CFR 353.25(d)(1)(i)). We preliminarily determine that the petitioner's affirmative statement of no further interest in this proceeding has satisfied the Department that changed circumstances exist sufficient to warrant revocation of this antidumping duty order. Therefore, we preliminarily determine to revoke the order covering certain forged steel crankshafts from the United Kingdom. Moreover, because this revocation will moot the need for the current administrative review, we have preliminarily determined to terminate the section 751(b) administrative review, pending final revocation of the order.

We are hereby notifying the public of our preliminary determination to revoke the antidumping duty order, and of our intent to terminate the current administrative review on certain forged steel crankshafts from the United Kingdom. If this preliminary determination to revoke the antidumping duty order is made final, it will apply to all shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1989. We selected this date as the effective date of the revocation in accordance with section 751(c) of the Tariff Act (19 U.S.C. 1675(c)), because these entries are the only ones that have not been liquidated and are not subject to final results of an administrative review.

Therefore, we intend to instruct the U.S. Customs Service to liquidate all unliquidated entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1989, without regard to antidumping duties. We will instruct the U.S. Customs Service to refund with interest any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this administrative review.

Interested parties may request a hearing within 10 days of the date of publication of this notice. Any hearing, if requested, will be held no less than 44 days after the date of publication of this notice. Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in those case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, and its decision on revocation, after the hearing, if any, and after its analysis of any written comments.

This review, intent to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and 19 CFR 353.22 (f) and 353.25 (d) (1991).

Dated: January 9, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–1205 Filed 1–15–92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[Docket No. 911217–1317]

Fisheries for Coastal Pelagic Resources Off the Pacific Coast

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the fisheries for coastal pelagic resources, definition of current participation, and intent to develop a fishery management plan.

SUMMARY: This notice informs individuals entering commercial fisheries for coastal pelagic resources that they may have to meet eligibility requirements in the future to participate in these fisheries. The Pacific Fishery Management Council (Council) is developing a fishery management plan that may limit effort based in part on present and historical participation. The plan, if adopted and implemented, may establish eligibility requirements, including a possible preference for participants who landed coastal pelagic species between January 1, 1986, and November 13, 1991. The intended effect of this announcement is to notify fishermen that criteria are being developed to identify present participants in these fisheries, and that entrance of new harvesters of these resources based on speculation is discouraged while discussions continue on whether and how access to coastal pelagic resources should be controlled.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, (213) 514–6667, or Rodney R. McInnis, Chief, Fisheries Management Division, (213) 514–6202.

SUPPLEMENTARY INFORMATION: The Council decided to develop a fishery management plan for coastal pelagic resources, which they defined as northern anchovy (*Engraulis mordax*), Pacific mackerel (*Scomber japonicus*), jack mackerel (*Trachurus symmetricus*), and Pacific sardine (*Sardinops sagax*), because managing these stocks will require authority to regulate beyond state waters. A Soviet trawler conducting research during March and April 1991, in cooperation with the Southwest Fisheries Science Center, harvested 248 metric tons (mt) of jack mackerel, 249 mt of Pacific mackerel, and 6 mt of sardine within and outside the exclusive economic zone. The cruise demonstrated that harvesting these resources beyond state jurisdictions may be practical, and U.S. trawlers have shown an interest in them. Since there is a possibility of a greatly expanded fishery, which would take place beyond the jurisdiction of any state, the Council directed its planning team to develop a fishery management plan for coastal pelagic species. Northern anchovy, which is already under Federal management, would be included in the new plan.

One of the management options to be considered in the plan would be some way of managing fishing effort by limiting the number of vessels harvesting the various resources to levels that are economically efficient. If too many vessels enter a fishery, the profit of each fisherman dwindles, management and enforcement costs rise, and the private investment needed by each fisherman to maintain an adequate share of the harvest increases. To keep harvesting capacity in line with the resources available, some kind of limited access system or systems will be analyzed in the plan.

The first step in evaluating a system by which the number of participants can be limited is to define the present participants. Although the decision has not been made on whether vessels, vessel operators, or owners of vessels will be defined as a "current participant", the Council, at its meeting in Millbrae, California, on November 12, 1991, adopted the interval of January 1, 1986, through November 13, 1991, as the period during which a fisherman would have had to land coastal pelagic species to be considered a "current participant" in these fisheries once a fishery management plan is implemented. The fishery management plan also may require that additional criteria be met, such as minimum amounts or numbers

of landings during this period. If a fisherman did not operate during this period, the Council anticipates providing lower priority for future access to coastal pelagic resources if a management regime is adopted that limits the number of participants.

This announcement is provided to notify the public of potential eligibility criteria for access to these fisheries. The Council may select any other date or dates for establishing eligibility, may choose not to make eligibility contingent on participation between certain dates, or may adopt another method of controlling fishing effort. Fishermen are not guaranteed future participation in these fisheries regardless of their date of entry or intensity of participation between certain dates.

Conducting the process in this way, the Council plans to define all current participants that have depended on coastal pelagic resources for their livelihood and, therefore, have an investment in these fisheries. Fishermen are put on notice that fishing activity beginning after November 13, 1991, may be given lower priority when and if a limited access option is adopted for coastal pelagic resources. However, this notice does not commit the Council to any particular eligibility standards for participation in these fisheries.

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

Dated: January 10, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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[Docket No. 911298–1298]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commercial Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, commerce.

ACTION: Notice of proposed Revised List of Fisheries to be effective in calendar year 1992 and request for comments thereon.

SUMMARY: NMFS proposes changes for calendar year 1992 to the List of Fisheries for 1991 associated with the Interim Exemption for Commercial Fisheries under section 114 of the Marine Mammal Protection Act of 1972 (MMPA) which was published on February 7, 1991 (56 FR 5138), and requests comments thereon.

DATES: Comments must be received on or before February 18, 1992.

ADDRESSES: Send comments to Dr. Nancy Foster, Director, Office of Protected Resources, F/PR2, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Robert C. Ziobro, Office of Protected Resources, Protected Species Management Division, 301–427–2322.

SUPPLEMENTARY INFORMATION: Section 114 of the MMPA established an interim exemption for the taking of marine mammals incidental to commercial fishing operations and requires NMFS to publish a List of Fisheries, along with the marine mammals and number of vessels or persons involved in each such fishery, in three categories as follows:

(I) A frequent incidental taking of marine mammals;

(II) An occasional incidental taking of marine mammals; or

(III) A remote likelihood, or no known incidental taking, of marine mammals.

Based on Congressional guidance, NMFS' interpretation of the 1988 amendments to the MMPA, public comment and meetings and consultations with state and Federal agencies, Regional Fishery Management Councils, and other interested parties, NMFS published the original List of Fisheries on April 20, 1989 (54 FR 16072). An interim rule governing the taking of marine mammals incidental to commercial fishing operations was published on May 19, 1989 (54 FR 21910), and a final rule governing reporting the take of marine mammals incidental to commercial fishing operations was published on December 15, 1989 (54 FR 51718). All determinations concerning issuing and maintaining the List of Fisheries were made in the process of promulgating the interim rule. The List of Fisheries for 1991 was published on February 7, 1991 (56 FR 5138).

The following criteria were used in classifying fisheries in the list of Fisheries for 1991:

Category I. There is documented information indicating a "frequent" incidental taking of marine mammals in the fishery. "Frequent" means that it is highly likely that more than one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

Category II. (1) There is documented information indicating an "occasional" incidental taking of marine mammals in the fishery, or (2) in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is a likelihood of at least an "occasional" incidental taking in the fishery. "Occasional" means that there is some likelihood that one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period, but that there is little likelihood that more than one marine mammal will be incidentally taken.

Category III. (1) There is information indicating no more than a "remote likelihood" of an incidental taking of a marine mammal in the fishery, or (2) in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is no more than a remote likelihood of an incidental take in the fishery. "Remote likelihood" means that it is highly unlikely that any marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

Section 114(b)(1)(C) of the MMPA as implemented by 50 CFR 229.3(a)(1) requires the Assistant Administrator for Fisheries, NOAA, to annually publish and request comments on proposed revisions to the List of Fisheries to be effective for the next calendar year. Accordingly, NMFS proposes for 1992 and requests comments on the following changes to the List of Fisheries for 1991. The tables referred to in the proposed changes are those from the List of Fisheries for 1991 published at 56 FR 5138 (Feb. 7, 1991).

Proposed Changes

1. *Recategorize* the Bering Sea and Aleutian Islands groundfish trawl fishery and the Gulf of Alaska groundfish trawl fishery from Category I (Table 1) to Category III (Table 3).

In the List of Fisheries for 1991, NMFS noted that observers recorded very few incidental takes of marine mammals in the Bering Sea and Aleutian Islands (BSAI) and in the Gulf of Alaska (GOA) groundfish trawl fisheries during late 1989 and early 1990, suggesting that the overall rate of interaction in these fisheries is very low. At that time, however, data were not sufficient to determine if certain areas and times within the BSAI and GOA groundfish trawl fisheries still qualify for Category I designation. Accordingly, NMFS retained these trawl fisheries in Category I for 1991.

Observer data for the entire year 1990 indicate that the frequency of marine mammal incidental take remained low. Natural resource observers, who provided in-season weekly reports on the number and species of marine mammals lethally taken, recorded only 28 marine mammals (harbor seal, walrus, Steller sea lion, Dall's porpoise, bearded seal) lethally taken in approximately 74 percent of the groundfish trawl catch (by weight) in both the Bering Sea and the Gulf of Alaska. Consideration of the large fleet size (200–350 participating vessels), substantial level of fishing effort (trawling for some species was available every day in 1990), the small number of marine mammals observed killed, and the substantial level of observer coverage indicates that this fishery is well below the threshold for either Category I or II. NMFS believes that Category III status is appropriate for the BSAI and GOA trawl fisheries for groundfish.

Natural resource observers are required to monitor fish catch on 100 percent of the fishing vessels greater than 125 feet (38.1 meters) in length and 30 percent of the vessels between 60 and 125 feet (18.3 and 38.1 meters). These observers will continue to monitor the incidental take of marine mammals. Data collected include the date, latitude and longitude, and the fishing statistical area in which marine mammals were taken. If these data indicate a pattern of marine mammal takes the fishery can be considered for recategorization.

2. *Recategorize* the Prince William Sound salmon drift gillnet fishery from Category I (Table 1) to Category II (Table 2).

This fishery is proposed for recategorization based on 1990 and 1991 observer data. The final report for the 1990 observer program indicated the take rate associated with serious injury or death is below the criteria established for Category I, one marine mammal was likely to be taken every 48.4 days (Wynne *et al.*, 1991). During 1990 a total of three marine mammals were observed taken, two harbor porpoise and one harbor seal. The second season of observer coverage (1991) included the first third of the fishing season, which was not observed in 1990, a time when interactions with Steller sea lions was expected to be high. Analysis of 1991 data indicates that one marine mammal was likely to be taken every 34 days (Wynne, pers. comm.). During 1991 a total of seven marine mammals were observed taken, three harbor porpoise, two Steller sea lions, one harbor seal, and one unidentified porpoise. Because interactions in this fishery appear to be oriented spatially, occurring mainly in the Copper River region, an area specific interaction rate was calculated for this area and estimated to be one interaction every 28 days—below the criteria for Category I. Given the potential for variation from the observer take rates, NMFS believes that it would be appropriate to maintain some level of monitoring, which would be accomplished through the vessel owner log requirement for Category II. In addition, lethal interactions in this fishery can be monitored using an alternative monitoring program such as the beachcast carcass survey to qualitatively assess the magnitude of lethal takes relative to current levels. If an increase in lethal takes is documented, NMFS will reevaluate the classification of this fishery.

The original List of Fisheries (54 FR 16072) stated that the level of interactions in this fishery was the same level as that reported for 1978, 1000. The information used in the original List of Fisheries was taken from a preliminary draft report which did not account for the spatial and temporal orientation of the data. The final report (Wynne, 1990) states that the rate of take from 1978 to 1988 was significantly reduced when all factors were examined and taken into consideration.

3. *Add* the Metlakatla/Annette Island salmonids drift gillnet fishery to Category II (Table 2).

The drift gillnet fishery for salmon within the Annette Island Reserve operates independently from the drift gillnet fisheries in other parts of southeastern Alaska. This fishery is managed by the Metlakatla Indian Community and the U.S. Bureau of Indian Affairs for the residents of the reserve. Fishermen and vessels that remain within 3000 feet (914.4 meters) of shore are not required to hold commercial fishing licenses or limited entry permits from the State of Alaska. Because of the uniqueness of this fishery, it should be treated as a separate fishery with a separate fishery code.

Metlakatla fishermen and vessels that fish beyond the 3000-foot (914.4 meters) boundary of the Reserve are included with all other fishermen and vessels in the southeastern Alaska drift gillnet fishery for salmon (Category II, Table 2).

4. *Redefine* the Category II (Table 2), Alaska Long Line/Set Line Fisheries For Sablefish—Southern Bering Sea, Aleutian Islands, and Western Gulf of Alaska (Unimak Pass and westward) as the Category II, Alaska Longline/Set Line Fisheries For Sablefish—Southern Bering Sea, Aleutian Islands (NMFS Statistical Reporting Areas 515, 517, 540), and Western Gulf of Alaska (NMFS Statistical Reporting Area 61 west of 165°W.).

The List of Fisheries for 1991 contained a redefinition of the boundaries for the longline/set line fishery for sablefish (black cod) in the southern Bering Sea, Aleutian Islands, and western Gulf of Alaska. Specifically, this redefined area includes NMFS Statistical Reporting Areas 515, 517, and 540 in the Bering Sea and Aleutian Islands Management Area and Statistical Reporting Area 61 in the Gulf of Alaska Management Area. The description also parenthetically described the area as "Unimak Pass and westward." This resulted in confusion as to whether those waters of Statistical Reporting Area 61 that lie east of Unimak Pass should be included in the Category II fishery or not. NMFS proposes that Unimak Pass should be the eastern boundary of this fishery. Accordingly, the formal description of this fishery should be all waters of NMFS Statistical Reporting Areas 515, 517, and 540 in the Bering Sea and Aleutian Islands Management Area and those waters in NMFS Statistical Reporting Area 61 in the Gulf of Alaska Management Area west of 165°W.

5. *Redefine* the Washington/Oregon Lower Columbia River Region, Willapa Bay, Grays Harbor Salmon Drift Gillnet Fishery (Category I, Table 1) as the Washington/Oregon Lower Columbia River Salmon Drift Gillnet Fishery (Category I, Table 1); and

6. *Add* the Washington Grays Harbor Salmonid Set and Drift Gillnet Fishery to Category I (Table 1); and

7. *Add* the Willapa Bay Salmon Drift Gillnet Fishery to Category I (Table 1).

All three fisheries are managed as independent units by different management authorities with different management goals. These differences are influenced by the migratory movements of the salmon involved and the availability of resident fish in some areas. Migratory movements of marine mammals also influence the marine mammal/fishery interactions during different seasons of the year, thus limiting or eliminating the ability to compare information collected on these fisheries, either through logbooks or by observer programs.

The Committee Report of the House of Representatives, during the reauthorization of the MMPA, specified the Columbia River Drift Gillnet Fishery as a Category I fishery. NMFS expanded the fishery to include Grays Harbor and

Willapa Bay based on results from a previous survey, which indicated similarities in the marine mammal/fishery interactions there. NMFS now recognizes that the present definition of the fishery is too broad when elements of the management of the fisheries are considered.

The Grays Harbor salmonid set and drift gillnet fishery is administered between a treaty tribal government and the State of Washington. This fishery is comprised of two gear elements (set and drift gillnets) and includes effort in lower rivers feeding the Grays Harbor estuary. Set gillnets are not part of the fisheries south of Pt. Chehalis at the southern portion of the entrance to Grays Harbor.

The Willapa Bay salmon drift gillnet fishery is managed by the State of Washington exclusively and is spatially and temporally isolated from the lower Columbia River fishery, which is managed by both Washington and Oregon under the interstate Columbia River Compact.

8. *Redefine* (and *Recategorize* part of) the Washington/Oregon/California (WA/OR/CA) Salmon Troll Fishery (Category II, Table 2) as the South of Cape Falcon, Oregon (45°46'00" N.) Salmon Troll Fishery (Category II, Table 2); and

9. *Add* the North of Cape Falcon, Oregon (45°46'00" N.) Salmon Troll Fishery to Category III (Table 3).

Further evaluation, by area, of the information used to categorize the WA/OR/CA salmon troll fishery indicates that the troll fisheries north of Cape Falcon, Oregon, to the Canadian Border have significantly fewer interactions with marine mammals than the fisheries south of Cape Falcon. In addition, the Pacific Fishery Management Council has managed the area north of Cape Falcon, primarily with quotas, separately from the areas south of Cape Falcon, which are managed primarily through seasons. The timing of the fisheries north of Cape Falcon and achievement of the quotas, which have declined in recent years, have resulted in minimal interactions with marine mammals because California sea lions, the principal species involved in salmon troll interactions, occur in waters north of Cape Falcon primarily during the periods when fisheries are closed. Since California sea lion abundance is low when the fisheries occur north of Cape Falcon, interactions are minimal and therefore, this area should be separated from the areas south of Cape Falcon, and placed in Category III. In addition, the Steller sea lion, which occasionally interacts with salmon troll fisheries, has been listed as threatened under the Endangered Species Act and fishermen may not use firearms to repel this species, thereby eliminating interactions that might result in mortality of this species.

10. *Clarification* of the Category II (Table 2) Washington Coastal River Salmonid Gillnet Fishery as the Category II Washington Coastal River Salmonid Set Gillnet Fishery.

The need for clarification of this fishery is based on evidence that the current definition is easily confused with fisheries in the lower Columbia River, Grays Harbor and Willapa Bay. The Washington outer coastal river fisheries are distinguished from other gillnet fisheries in the region in that these are set gillnet fisheries in rivers whose estuaries empty directly into the Pacific Ocean, rather than into Willapa Bay or Grays Harbor, and are wholly within Washington State, unlike the Columbia River. The fisheries are managed under regulations set by several coastal treaty Indian tribes.

11. *Clarification* of the Category II (Table 2) Washington Puget Sound Region, Hood Canal, Strait of Juan de Fuca (estuaries and lower river areas subject to tidal action) Set and Drift Gillnet salmonid fisheries as the Category II Washington Puget Sound Region and inland waters south of the U.S.-Canada border, including the Strait of Juan de Fuca, Hood Canal and estuaries and lower river areas (subject to tidal action) Set and Drift Gillnet salmonid fisheries.

NMFS has received several questions on the northern limit of this fishery and whether it includes the southern Strait of Georgia near the U.S.-Canada border. To clarify this, NMFS proposes the change for 1992.

12. *Redefine* (and *Recategorize* part of) the California gillnet fishery for white sea bass, yellow tail, soupfin shark, white croaker, bonito/flying fish (Category II, Table 2) as the California set gillnet fishery for white croaker, bonito, and flying fish, (Category II, Table 2); and

13. *Add* the Category I (Table 1) California set gillnet fishery for soupfin shark, yellowtail, and white seabass.

Analysis of available data for the presently designated Category II fishery indicates that marine mammals are taken at a rate that would place the fishery in Category II. However, since reports from fishermen in the set gillnet fishery are grouped together under one fishery code, it is not possible to determine at what rate the individual fisheries are taking marine mammals from vessel owner log data alone. Thus, it is possible that an individual fishery may be taking marine mammals at a frequent rate.

Furthermore, a re-evaluation of California Department of Fish and Game observer data for the period 1984 through 1986, for individual set gillnet fisheries, indicates a disparity in rate of taking among individual set gillnet fisheries. In the soupfin shark fishery, takes of marine mammals were observed in 1984 (141 observed sets) and 1985 (71 observed sets). In 1985, take frequency exceeded one animal/20 days/vessel. In contrast, no marine mammals were observed taken in the white croaker fishery in 1984 (four observed sets), 1985 (30 observed sets), and 1986 (127 observed sets). These differences in take frequency are most likely due to variation in mesh size. Larger mesh sizes are known to entangle marine mammals at a much higher rate than smaller mesh sizes. The white sea bass, yellowtail, and soupfin shark gillnet fisheries commonly use mesh sizes from 6.5 to 9.0 inches (16.5 to 22.9 centimeters), while the gear used for white croaker, bonito, and flying fish has a mesh size of 2.75 inches (7 centimeters).

For these reasons, NMFS is proposing the recategorization of the soupfin shark, yellowtail, and white seabass set gillnet fisheries to Category I and maintaining the white croaker, bonito, and flying fish fisheries in Category II.

14. *Add* to Category II (Table 5) the Atlantic Ocean, Caribbean, Gulf of Mexico pair trawl fishery for swordfish, tuna, shark.

Pair trawls, designed in Europe, are now being used in the swordfish fishery managed under the Fishery Management Plan for Atlantic swordfish. Significant catches of tuna have also been landed using this type of gear.

Presently the only available information on pair trawl interactions with marine mammals is limited to unofficial reports on the striped bass and albacore tuna fisheries in the Bay of Biscay, France. Information from the pair trawl albacore tuna fishery indicates that interactions with marine mammals occur at a rate greater than that documented in the drift gillnet fisheries when the lead rope is 2 meters under water. Little information is available on the pair trawl striped bass fishery. However, unofficial reports indicate a noticeable increase in numbers of stranded dolphins on the northern coast of Brittany since the introduction of pair trawls. No data or interaction rates could be made available because the European Economic Community is currently considering a report on this issue.

Information on the U.S. pair trawl swordfish fishery indicate that this gear is used at night in manner similar to that used in the drift gillnet swordfish fishery, with reported high catches of swordfish. In addition, pair trawls are being used in the same area fished by longline vessels, in which documented takes of marine mammals have occurred. Although this information does not represent a full year of fishing effort in waters under the jurisdiction of the United States, NMFS believes that Category II would be appropriate for this fishery.

The fishery is identified as the Atlantic Ocean, Caribbean, Gulf of Mexico pair trawl fishery for swordfish, tuna, shark, because it is recognized that the same stocks of the three target species occur in these areas.

NMFS will continue to investigate this gear type, its potential for use in various fisheries, and the spatial and temporal relationship between these fisheries and marine mammals.

15. *Add* the South Atlantic (SOA), Gulf of Mexico (GMX) shark bottom longline fishery to Category III.

The bottom longline fishery for shark was not specifically included in the List of Fisheries in 1990 or 1991. This gear is fished on the bottom or very deep in the water column (near bottom) and is unlikely to interact with marine mammals. According to Parrack (1990) there were 124 vessels involved in this directed longline fishery for sharks in 1989.

16. *Combine* the Southern New England (SNE) area with the Mid-Atlantic (MDA) so the MDA extends from Nantucket Island, Massachuesetts, to Cape Hatteras, North Carolina. Accordingly, the following fisheries are renamed to accommodate this change. Fisheries marked with an "*" are discussed in greater detail because of other changes associated with the fishery:

Category I
  Trawl fishery
  MDA Foreign mackerel
Category II
  Trawl fisheries
  *MDA squid
  MDA Atlantic mackerel
Category III
  Trawl fisheries
  Gulf of Maine (GME), MDA groundfish
  GME, MDA sea scallops
  MDA mixed species
  Purse seine
  GME, MDA menhaden
  GME, MDA Atlantic bluefin tuna
  Pelagic hook & line/harpoon/gillnet
  GME, MDA tuna, shark, swordfish
  Gillnet fisheries
  *GME, MDA South Atlantic (SOA) coastal shad, sturgeon
  Fixed gear fisheries trap/pot-fish
  GME, MDA mixed species
  Fixed gear fisheries trap/pot-lobster, crab
  GME, MDA inshore lobster
  GME, MDA offshore lobster
  Stop seine, weirs (staked fish traps)
  MDA mixed species
  Dredge fisheries
  GME, MDA sea scallops
  MDA offshore clam

The "sea sampler program" referred to for fisheries in the Northeast is a program administered by NMFS' Northeast Science Center to address the needs of fishery management and the Fishery Management Councils. They employ a systematic method of observing fisheries which have a high priority from a fishery perspective. These observers collect the same marine mammal information as observers under the interim exemption program.

17. *Redefine* the GME groundfish/mackerel gillnet fishery (Category I, Table 4) as the New England Multispecies Sink Gillnet (includes all species as defined in the Multispecies Fishery Management Plan and spiny dogfish) for all waters east of 71°40'W.; and

18. *Add* the GME Small Pelagics (which includes mackerel, herring, menhaden) Surface Gillnet to Category I (Table 4).

The separating of the fishery into two components will allow for better information collection through vessel owner logs and the sea sampler program.

Proposed change 14 will incorporate fishing activity south of the Gulf of Maine and will make the information received in vessel owner logs consistent with NMFS Northeast Science Center statistics data collection zones. There are approximately 250 vessels participating in this fishery.

Proposed change 15 will include the seasonal (spring and fall) mackerel gillnet fishery and any other surface gillnet operations targeting small pelagic species such as herring or menhaden. These operations involve small vessels fishing opportunistically when fish and market conditions are optimal. The potential for marine mammal interactions depends on the seasonal migration and abundance of dolphins or seals at the time when fish and market conditions are optimal. There are approximately 50 vessels participating in this fishery.

19. *Redefine* and *recategorize* the Category II (Table 5) SNE, MDA Squid Trawl as the Category III (Table 6) MDA Squid Trawl.

The Northeast Science Center had voluntary sea samplers on 45 trawler trips (31 vessels) in 1989–90, on which 604 hauls were observed in 154 days fished, and no marine mammal interactions were observed. Vessel owner logbook data entered for 1989 and 1990 show no interactions in 5,374 days fished. No mammals were observed in 75 joint venture transfers from two U.S. vessels during 1990. There is 100-percent observer coverage on foreign joint venture efforts. The chance of a marine mammal interaction occurring in this fishery appears to be remote. This fishery was initially placed in Category II because of takes observed on foreign vessels, which were attributed to the large size (trawling capabilities) of the foreign vessels. NMFS will consider a separate fishery definition for large vessels and/or pair trawlers (large combined length) when and if sufficient data become available to determine the vessel length at which takes are likely to occur. This fishery will continue to carry observers under the sea sampler program.

20. *Redefine* the Category III (Table 6) GME, SNE, MDA, SOA, coastal shad, sturgeon as the Category III GME, SOA coastal shad, sturgeon gillnet fishery;

21. *Recategorize* MDA Coastal Shad, Sturegon Gillnet Fishery to Category II; and

22. *Redefine* as the MDA Coastal Gillnet Fishery (includes, but not limited to Atlantic cod, Atlantic croaker, Atlantic mackerel, Atlantic sturgeon, black drum, bluefish, herring, menhaden, scup, shad, striped bass, sturgeon, weakfish, white perch, and yellow perch).

Coastal gillnet fisheries use both anchored (or sink) and drift gillnets to catch anadromous fish such as shad, herring, Atlantic sturgeon and white perch, as well as coastal species such as bluefish, menhaden, and weakfish.

The fishery tends to be opportunistic, and can be found in some form in the MDA year-around, with a peak in effort in the spring and early summer that coincides with shad and herring runs and weakfish northward migrations.

Harbor porpoise, bottlenose dolphins and harbor seals are known to occur seasonally inshore in the MDA. Documented information regarding incidental takes of these marine mammals in the inshore gillnet fisheries is uncommon. However, there is increasing evidence that incidental takes occur when and where marine mammals and gillnets occur together. Recent specific reports include a harbor

porpoise in a shad gillnet in Chesapeake Bay (March 4, 1989); a bottlenose dolphin with net marks retrieved from Chesapeake Bay (July 1990); a bottlenose dolphin with its body cavity opened and a cement block tied to its tail found in Delaware Bay (June 4, 1990) in the vicinity of gillnet activity; a live humpback seen off Virginia Beach, Virginia (April 3, 1990), entangled in shad gillnet 2 days after a dead humpback stranded in the same area with rope and net scars; 14 harbor porpoise washed up on New Jersey beaches in the vicinity of shad gillnets in the spring of 1991, some of which had net marks and full stomachs, six harbor porpoise stranded on Virginia beaches, including four with net marks; and increased enforcement inquiries in southern New Jersey in late March, which resulted in reports of two lethal takes and two live takes of harbor porpoise in the shad gillnet fisheries in that area.

Since Federal fisheries permits are not required for these fisheries, understanding of and participation in the Marine Mammal Exemption Program (i.e., reporting of lethal takes in a Category III fishery) has been minimal. Over 2,200 licenses have been issued by the states of participation in various coastal gillnet fisheries in the Mid-Atlantic. Fishermen can hold more than one license, and licenses are not required for some coastal gillnet fisheries, so actual effort cannot be ascertained. NMFS is working with the Atlantic States Marine Fisheries Commission to inform fishermen of their responsibilities under the interim exemption for commercial fisheries and the consequences of noncompliance. Additional documented information is needed to determine if Category I is more appropriate for these fisheries.

Discussion on the longline and bottomfish fisheries in the Northwest Hawaiian Islands.

In early 1990, there were indications of Hawaiian monk seals (*Monachus schauinslandi*) being snagged and killed in the longline and bottomfish fisheries in the Northwest Hawaiian Islands (NWHI) in a manner and at a level not considered in earlier versions on the List of Fisheries.

In response to these concerns, the Western Pacific Fishery Management Council (WPFMC) developed emergency regulations, which were published by NMFS on November 27, 1990, under the Pelagics Fishery Management Plan (FMP) (55 FR 49285) and the Bottomfish and Seamount Groundfish FMP (55 FR 49050). These regulations implemented requirements for fishing logbooks, for permits to fish with longline gear within the management area, and to take observers as requested when intending to fish within 50 nautical miles of French Frigate Shoals, Gardner Pinnacles, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island.

Recent information regarding incidental hookings and snaggings of monk seals confirms the occurrence of interactions with the longline swordfish fishery. As of May 28, 1991, nine monk seals with evidence of interaction or injury associated with longline fishing operations have been reported or observed. There are also indications that a number of vessels were fishing illegally within the study zones (as defined in Amendment 3 to the FMP for Pelagic Fisheries of the Western Pacific Region). Some injured seals may have died at sea or were injured and hauled out at other islands where they would not be seen; therefore, observed injuries may represent only a part of the impact of the fishery.

The WPFMC and NMFS determined that conditions in the fishery and the endangered status of the Hawaiian monk seal warranted immediate action under the emergency authority of the Fishery Conservation and Management Act (Magnuson Act). Accordingly, the WPFMC requested the Secretary of Commerce to promulgate emergency regulations under the Pelagics FMP that would prohibit longline fishing governed by the FMP within 50 nautical miles of the NWHI, including 100-mile wide corridors between islands where these 50 nautical mile areas are not contiguous, to prevent the incidental take of Hawaiian monk seals. The emergency rule was published on April 18, 1991 (56 FR 125842). The rule was extended with a modified definition of longline gear on July 19, 1991 (56 FR 33211) which expired on October 13, 1991. A permanent closure through Amendment 3 to the Pelagics FMP became effective on October 14, 1991 (56 FR 52214, October 18, 1991).

These measures were required because existing regulations did not provide a means to eliminate interactions between Hawaiian monk seals and the longline fishery in the NWHI. With the implementation of Amendment 3 to the Pelagics FMP, the risk of incidental take of Hawaiian monk seals appear to have been reduced. Close to 100 percent of the Hawaiian monk seal population can be expected to be found within the closed area. There have been no reports of interactions or sightings of hooked or injured seals since the emergency regulations went into effect. NMFS intends to place observers on longline vessels operating between 50 and 100 miles from the islands on a voluntary basis.

Concurrent with the emergency regulation requiring observers on selected longline vessels, a similar emergency regulation for the NWHI bottomfish fishery was published on November 26, 1990 (56 FR 5159). On May 30, 1991 (56 FR 24351), a final rule was published that implemented Amendment 4 to the Western Pacific Bottomfish and Seamount Groundfish Fisheries FMP and made final the provisions of the November 26, 1990, emergency interim rule. The final rule also expanded the observer requirement to include Nihoa Island, Necker Island, and Maro Reef. That action was taken to ensure adequate collection of data on interactions between the bottomfish fishery and marine mammals or endangered and threatened species in the NWHI. These data are necessary to develop long-term solutions to conservation problems in the bottomfish fishery in the NWHI.

Based on the actions taken by the WPFMC under the Magnuson Act and the available information on marine mammal interactions in the longline and bottomfish fisheries in the NWHI, NMFS believes that recategorization of these fisheries is not warranted at this time. However, if other interactions occur or if regulations are modified, the situation will be re-evaluated and appropriate changes proposed.

Literature Cited

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Dated: January 9, 1992.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

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Endangered Species; Modification of Permit; Peter Dutton and Donna McDonald, Hubbs Sea World Research Institute (P–697)

On April 10, 1991, notice was published in the Federal Register (54 FR

41132) that a modification to permit No. 697 had been filed by Peter Dutton and Donna McDonald, of the Hubbs Sea World Research Institute, 1700 South Shores Road, San Diego, California 92109, to extend the expiration date of the permit, and to include attaching ultrasonic transmitters for up to twenty turtles and performing biopsies on the turtles as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) regulations governing endangered fish and wildlife permits (50 CFR parts 217–222).

Notice is hereby given that on January 10, 1992, as authorized by the provisions of the Endangered Species Act of 1973, the National Marine Fisheries Service issued a Modification to Permit No. 697 for the above conditions, subject to certain guidelines set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in Section 2 of the Act. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, of the National Marine Fisheries Service regulations govening endangered species permits.

The Permit is available for review in the following offices: Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., room 7324, Silver Spring, Maryland 20910; and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: January 10, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–1048 Filed 1–15–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

January 13, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 21, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6494. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and India agreed to extend their Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended, for the period which begins on January 1, 1992 and extends through December 31, 1992.

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 56 FR 60101, published on November 27, 1991).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 13, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended and extended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 21, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 1992 and extending through December 31, 1992, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
218	8,548,740 square meters.
219	42,223,661 square meters.
313	22,873,265 square meters.
314	5,277,958 square meters.
315	8,864,854 square meters.
335/635	420,000 dozen.
336/636	570,000 dozen.
340/640	1,425,000 dozen.
341	3,225,159 dozen of which not more than 1,935,095 dozen shall be in Category 341–Y [1].
342/642	810,000 dozen.
345	120,000 dozen.
347/348	367,693 dozen.
363	28,051,034 numbers.
369–D [2]	880,000 kilograms.
369–S [3]	480,000 kilograms.
369–O [4]	9,200,000 kilograms.
641	990,200 dozen.
647/648	575,000 dozen.
Group II	
200, 201, 220–229, 237, 239, 300, 301, 317, 326, 330–334, 338, 339, 349–352, 359–362, 600–607, 611–634, 638, 639, 643–646, 649–652, 659, 665–O [5], 666–670 and 831–859, as a group.	110,000,000 square meters equivalent.

[1] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 369–O: all HTS numbers except 5702.10.9020, 5702.49.1010, 5702.99.1010 (rugs exempt from the bilateral agreement); 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369–D); and 6307.10.2005 (Category 369–S).

[5] Category 665–O: all HTS numbers except 5702.10.9030, 5702.42.2010, 5702.92.0010 and 5703.20.1000 (rugs exempt from the bilateral agreement).

Imports charged to these category limits for the period beginning on January 1, 1991 and extending through December 31, 1991 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and India.

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,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-1201 Filed 1-15-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management; Defense Transportation Tracking System

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice only.

SUMMARY: The Department of Defense (DOD) is expanding its defense Transportation Tracking System (DTTS) to track Security Risk Category (SRC) 2 munitions effective 18 December 1991. In conjunction with this expansion, Armed Guard Service is eliminated as a Transportation Protective Service (TPS).

ADDRESSES: Military Traffic Management Command, ATTN: MT-SS, 5611 Columbia Pike, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Jones or CPT Irene Rosen, HQMTMC, 5611 Columbia Pike, Falls Church, VA 22041-5050, (703) 756-1089.

SUPPLEMENTARY INFORMATION: The purpose of this article is to provide information on the expansion of the Defense Transportation Tracking System (DTTS).

The military services and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence have approved expansion of the DTTS. The expansion implements a phased plan that will eventually result in the tracking of all DOD Categorized and Uncategorized munitions under Satellite Motor Surveillance (SM).

Accordingly, beginning on 18 December 1991, the DTTS entered the first step of the 3-step expansion plan. On that date, the tracking of SRC-2 Arms, Ammunition and Explosives (AA&E) commenced, adding approximately 5,200 shipments annually to the SM tracking volume.

Immediately upon inplementation of the first step (18 December), Armed Guard Surveillance (AG) has ceased to exist as a transportation Protective Service (TPS). Any armed protection required on motor movements will be provided by DOD.

Formats and data element requirements for SM are spelled out in a DOD standard rules publication. A copy of the SM rule may be obtained from HQs, Military Traffic Management Command, Directorate of Inland Traffic, ATTN: MT-INNG, 5611 Columbia Pike, Falls Church, VA 22041-5050.

Cpt. Irene M. Rosen,

Transportation Security Officer.

[FR Doc. 92-1171 Filed 1-15-92; 8:45 am]

BILLING CODE 3710-08-M

Establishment of the Uniformed Services Treatment Facilities (USTF) Managed Care Plan

Notice is hereby given that in compliance with Public Law 101-510, the Uniformed Services Treatment Facilities (USTF) Managed Care Plan (Plan) is established effective October 1, 1992. This notice establishes the USTF Managed Care Plan as a health care delivery system in the Military Health Services System (MHSS) and designates those facilities specified in Public Law 97-99 as the sites for implementation of this Plan. The USTFs are ten former Public Health Service Hospitals which, in accordance with Public Law 97-99, are deemed to be facilities of the uniformed service for the purposes of providing health care to eligible beneficiaries, as set forth in chapter 55 of title 10, United States Code.

Public Law 101-510 directed the Secretary of Defense to complete negotiations with the Uniformed Services Treatment Facilities and begin implementation of a managed care delivery and reimbursement model not later than September 30, 1991, in order to continue to utilize the USTFs in the military health care delivery system in a cost-efficient manner.

The USTF Managed Care Plan established in accordance with this direction consists of five major components: (1) Enrollment; (2) uniform benefit package; (3) comprehensive internal and external utilization management/quality assurance program; (4) extensive reporting and oversight activities; (5) capitated reimbursement; and (6) reinsurance. The benefit package consists of the standard CHAMPUS benefit plus a group of preventive care services. The CHAMPUS regulation (DoD 6010.8-R) defines all benefits and limitations of the standard CHAMPUS benefit package. The U.S. Preventive Services Task Force Guidelines (1989) defines all benefits and limitations of the preventive care services.

Dated: January 9, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc 92-1129 Filed 1-15-92; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Renewal of the Special Operations Policy Advisory Board

ACTION: Notice.

SUMMARY: The Special Operations Policy Advisory Board (SOPAG) was renewed by the Department of Defense for a two-year period, effective January 8, 1992, in accordance with the provisions of Public Law 92-463, the "Federal Advisory Committee Act."

The SOPAG provides timely and expert advice to the Secretary of Defense and other senior Defense Department officials on the formulation of policy and the execution of military activities concerned with special operations and low-intensity conflict capabilities. Membership on the SOPAG is well-balanced in terms of the specialized missions to be accomplished and the diverse interest groups represented. Members are drawn from among current high-level military and civilian government officials, former diplomatic representatives, and private sector individuals.

For further information on the SOPAG, contact: Lieutenant Colonel Dave Lewis, office of the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict (703) 695-3208.

Dated: January 9, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-1124 Filed 1-15-92; 8:45 am]

BILLING CODE 3810-01-M

Defense Policy Board Advisory Committee Task Force on Soviet Military

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Policy Board Advisory Committee Task Force on Soviet Military will meet in closed session on 24 January 1992 from 0900 until 1400 at 1710 Goodridge Drive, TI-7-2, McLean, VA.

The mission of the Defense Policy Board Task Force on Soviet Military is to study developments in the Soviet Union that affect the Soviet Military and

make recommendations on policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. app. II, (1982)], it has been determined that this Defense Policy Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: January 9, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–1126 Filed 1–15–92; 8:45 am]

BILLING CODE 3810–01–M

Strategic Defense Initiative Advisory Committee (SDIAC)

ACTION: Cancellation of meeting.

The closed meeting announced in the **Federal Register** on Monday, December 30, 1991 (56 FR 67289) scheduled for January 9 and 10, 1992 was canceled.

Dated: January 9, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–1128 Filed 1–15–92; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Panel on Streamlining and Codifying Acquisition Laws

AGENCY: Defense Systems Management College.

ACTION: Notice of meeting.

SUMMARY: Open to the public on January 29, 1992, starting at 8:30 a.m. in the Yorktown Room of the Fort Belvoir Officers' Club, Fort Belvoir, Virginia. The panel will begin hearing presentations/recommendations by the task force on its review of the out-of-scope laws, and by the various panel working groups on the statutes they have reviewed to date.

For further information contact Major Jean Kopala at (703) 355–2665.

Dated: January 9, 1992.

Linda M.Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–1125 Filed 1–15–92; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Panel on Streamlining and Codifying Acquisition Laws

AGENCY: Defense Systems Management College.

ACTION: Notice of availability of legislative abstracts.

SUMMARY: In an effort to support the work of the Defense Advisory Panel on Streamlining and Codifying Acquisition Laws, the Acquisition Law Task Force has prepared abstracts on various laws and code sections. Each abstract contains a brief synopsis of the law and its legislative history and presents some of the issues for discussion.

To date abstracts have been prepared on the following acquisition laws and code sections:

10 U.S.C. 2202; 2273; 2301–2304; 2307; 2315; 2320; 2351–2356; 2358; 2360–2363; 2365–2372; 2399; 2403; 2430–2437;
22 U.S.C. 5064;
31 U.S.C. 3729–3733;
35 U.S.C. 202–205;
41 U.S.C. 411; 414; 418b; 421–423;
42 U.S.C. 2457; 5908;

Service Contract Act; Buy American Act; Davis-Bacon Act; Walsh-Healey Act; Miller Act; Truth in Negotiations Act (TINA); Prompt Payment Act; Contract Disputes Act of 1978; Ethics in Government Act of 1978; Invention Secrecy Act of 1951; Cost Accounting System (Pub. L. 91–379); William Langer Jewel Bearing Plant (Pub. L. 90–469); DoD Appropriations Act, 1991 (Pub. L. 101–511).

As new abstracts become available their availability will be announced in the **Federal Register** as well. Anyone interested in obtaining a copy of one or more of these abstracts should contact CPT Karen O'Brien, Acquisition Law Task Force attorney, at 703–355–2665.

Dated: January 9, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–1130 Filed 1–15–92; 8:45 am]

BILLING CODE 3810–01–M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, February 4, 1992; Tuesday, February 11, 1992; Tuesday, February 18, 1992; and Tuesday, February 25, 1992, at 10 a.m. in room 800, Hoffman Building #1, Alexandria, VA.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c) (2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b. (c) (4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b. (c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20310.

Dated: January 9, 1992.

L. M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–1127 Filed 1–15–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Privacy Act of 1974; Amend Systems of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Amend systems of records.

SUMMARY: The Department of the Air Force proposes to amend two systems of records in its inventory of records systems notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The amendments will be effective February 18, 1992, unless comments are received which result in a contrary determination.

ADDRESSES: Send any comments to Mrs. Anne Turner, SAF/AAIA, The Pentagon, Washington, DC 20330–1000. Telephone (703) 697–3491 or Autovon 227–3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force record system notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), have been published in the **Federal Register** as follows:

50 FR 22332 May 29, 1985 (DoD Compilation, changes follow)
50 FR 24672 Jun. 12, 1985
50 FR 25737 Jun. 21, 1985
50 FR 46477 Nov. 8, 1985
50 FR 50337 Dec. 10, 1985
51 FR 4531 Feb. 5, 1986
51 FR 7317 Mar. 5, 1986
51 FR 16735 May 6, 1986
51 FR 18927 May 23, 1986
51 FR 41362 Nov. 14, 1986
51 FR 44332 Dec. 9, 1986
52 FR 11845 Apr. 13, 1987
53 FR 24354 Jun. 28, 1988
53 FR 45800 Nov. 14, 1988
53 FR 50072 Dec. 13, 1988
53 FR 51301 Dec. 21, 1988
54 FR 10034 Mar. 9, 1989
54 FR 43450 Oct. 25, 1989
54 FR 47550 Nov. 15, 1989
55 FR 21770 May 29, 1990
55 FR 21900 May 30, 1990 (Air Force Address Directory)
55 FR 27868 Jul. 6, 1990
55 FR 28427 Jul. 11, 1990
55 FR 34310 Aug. 22, 1990
55 FR 38126 Sep. 17, 1990
55 FR 42625 Oct. 22, 1990
55 FR 42629 Oct. 22, 1990
55 FR 52072 Dec. 19, 1990
56 FR 1990 Jan. 18, 1991
56 FR 5804 Feb. 13, 1991
56 FR 12713 Mar. 27, 1991
56 FR 23054 May 20, 1991
56 FR 23876 May 24, 1991
56 FR 26801 Jun. 11, 1991
56 FR 33384 Jul. 22, 1991
56 FR 63718 Dec. 5, 1991

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), which requires the submission of altered systems reports. The specific changes to the system of records being amended are set forth below, followed by the record systems notices, as amended, in their entirety.

Dated: January 13, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F035 AF MP O

System name:

Unit Assigned Personnel Information (51 FR 41396, November 14, 1986).

Changes:

System location:

Delete entry and replace with "Headquarters United States Air Force; major command headquarters; all Air Force installations and Air Force units, and Headquarters, United States Space Command (HQ USSPACECOM). Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

* * * * *

Authority for maintenance of the system:

Change "10 U.S.C. 8012" to "10 U.S.C. 8013" and add "and Executive Order 9397." to the end of the entry.

* * * * *

Retention and disposal:

Delete entry and replace with "Retained in office files until superseded, no longer needed, separation or reassignment of individual on permanent change of assignment (PCA) or permanent change of station (PCS). On intercommand reassignment PCA or PCS the file is given to individual or destroyed. On intracommand reassignment PCA or PCS the file is given to individual, forwarded to gaining commander, or destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning."

Notification procedures:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Deputy Chief of Staff/Personnel, Headquarters United States Air Force, Washington, DC 20330–5060 or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

Record access procedures:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address written requests to the Deputy Chief of Staff/Personnel, Headquarters United States Air Force, Washington, DC 20330–5060 or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

Contesting record procedures:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F035 AF MP O

SYSTEM NAME:

Unit Assigned Personnel Information.

SYSTEM LOCATION:

Headquarters United States Air Force; major command headquarters; all Air Force installations and Air Force units, and headquarters, United States Space Command (HQ USSPACECOM). Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel, and Air Force Reserve and Air National Guard personnel. Air Force civilian employees may be included when records are created which are identical to those on military members. Army, Navy, Air Force and Marine Corps Active duty military and civilian personnel assigned to HQ USSPACECOM.

CATEGORIES OF RECORDS IN THE SYSTEM:

File copies of separation actions, newcomers briefing letters, line of duty determinations, assignment actions, retirement actions, in and out processing checklists, promotion orders, credit union authorization, disciplinary actions, favorable/unfavorable communications, record of counseling, appointment notification letters, duty status changes, applications for off duty employment, applications and allocations for school training, professional military and civilian education data, private weapons storage records, locator information including names of dependents, home address, phone number, training and experience data, special recognition nominations, other personnel documents, and records of training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by; as implemented by Air Force Manual 30–3, Vol III, Mechanized Personnel Procedures, Air Force Manual 30–130, Vol I, Base Level Military Personnel System; and Executive Order 9397.

PURPOSE(S):

Provides information to unit commanders/supervisors for required actions related to personnel administration and counseling, promotion, training, separation, retirement, reenlistment, medical examination, testing, assignment, sponsor program, duty rosters, and off duty activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USERS:

The "Blanket Routine Uses" published at the beginning of the Air Force's complication of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, notebooks/binders, and card files.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files until superseded, no longer needed, separation or reassignment of individual on permanent change of assignment (PCA) or permanent change of station (PCS). On intercommand reassignment PCA or PCS the file is given to individual or destroyed. On intracommand reassignment PCA or PCS the file is given to individual, forwarded to gaining commander, or destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief or Staff/Personnel, Headquarters United States Air Force, Washington DC 2033–5060.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on them should address written inquiries to the Deputy Chief of Staff/Personnel, Headquarters United States Air Force, Washington DC 20330–5060 or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Deputy Chief of Staff/Personnel, Headquarters United States Air Force, Washington DC 20330–5050 or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual concerned, financial institutions, educational institution employees, medical institutions, police and investigating officers, bureau of motor vehicles, witnesses, reports prepared on behalf of the agency, standard Air Force forms, personnel management actions, extracts from the Personnel Data System (PDS) and records of personal actions submitted to or originated within the organization.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F120 AF IG B

System name:

Inspector General Records (50 FR 24672, June 12, 1989).

Changes:

System location:

Delete entry and replace with "Office of the Inspector General, Office of the Secretary of the Air Force (SAF/IG) Pentagon, Washington, DC 20330–5000. Headquarters of major commands and at all levels down to and including Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

Categories of individuals covered by the system:

Insert the word "allegation" after the word "complaint" in first sentence. Add "All senior officials who are subjects of reviews, inquiries, or investigations." to the end of the entry.

Categories of records in the system:

Delete entry and replace with "Letters/transcriptions of complaints, allegations and queries; letters of appointment; reports of reviews, inquiries and investigations with supporting attachments, exhibits and photographs; record of interviews; witness statements; reports of legal review of case files; congressional responses; memoranda; letters and reports of findings and actions taken; letters to complainants and subjects of investigations; letters of rebuttal from subjects of investigations; finance; personnel; administration; adverse information, and technical reports."

Authority for maintenance of the system:

Change "8012" to "8013", and add "10 U.S.C. 8020, Inspector General, and Executive Order 9397." to the end of the entry.

Purpose(s):

Insert the word "allegations" after "complaints" in first sentence; add "and allegations" after "complaints" in second sentence; and add to end of entry "Used in connection with the recommendation/selection/removal or retirement of officers eligible for promotion to or serving in, general officer ranks."

* * * * *

Storage:

Add to end of entry "in computers and on computer output products."

Retrievability:

Delete entry and replace with "Retrieved by name, Social Security Number and office where complaint, allegation or query was filed."

Safeguards:

Add to end of entry "Those in computer storage devices are protected by computer system software."

Retention and disposal:

Delete entry and replace with "Retained in office files for two years after year in which case is closed. For senior official case files, retained in office files until two years after the year in which case is closed, or two years after the senior official retires,

whichever is later. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."

System manager(s) and address:

Delete entry and replace with "The Inspector General, Office of the Secretary of the Air Force (SAF/IG), Pentagon, Washington DC 20330–5000."

Notification procedures:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Inspector General, Office of the Secretary of the Air Force (SAF/IG), Pentagon, Washington DC 20330–5000."

Record access procedures:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the Inspector General, Office of the Secretary of the Air Force (SAF/IG), Pentagon, Washington DC 20330–5000."

Contesting record procedures:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager."

Record source categories:

Delete entry and replace with "Complainants, inspectors, members of Congress, witnesses and subjects of investigations."

Exemptions claimed for the system:

Delete entry and replace with "Portions of this system may be exempt under the provisions of 5 U.S.C. 552a. However, if a person is denied any right, privilege, or benefit, he or she would otherwise be entitled to as a result of keeping this material, it must be released, unless doing so would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553 (b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager."

F120 AF IG B

SYSTEM NAME:

Inspector General Records.

SYSTEM LOCATION:

Office of the Inspector General, Office of the Secretary of the Air Force (SAF/IG), Pentagon, Washington, DC 20330–5000. Headquarters of major commands and at all levels down to and including Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All those who have registered a complaint, allegation or query with the Inspector General or Base Inspector on matters related to the Department of the Air Force. All senior officials who are subjects of reviews, inquiries, or investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters/transcriptions of complaints, allegations and queries; letters of appointment; reports of reviews; inquiries and investigations with supporting attachments, exhibits and photographs; record of interviews; witness statements; reports of legal review of case files, congressional responses; memoranda; letters and reports of findings and actions taken; letters to complainants and subjects of investigations; letters of rebuttal from subjects of investigations; finance; personnel; administration; adverse information, and technical reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, 10 U.S.C. 8020, Inspector General, and Executive Order 9397.

PURPOSE(S):

Used to insure just, thorough, and timely resolution and response to complaints, allegations or queries, and a means of improving morale, welfare, and efficiency of organizations, units, and personnel by providing an outlet for redress. Used by the Inspector General and Base Inspectors in the resolution of complaints and allegations and responding to queries involving matters concerning the Department of the Air Force and in some instances the Department of Defense. Used in connection with the recommendation/selection/removal or retirement of officers eligible for promotion to or serving in, general officer ranks.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name, Social Security Number and officer where complaint, allegation or query was filed.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files for two years after year in which case is closed. For senior official case files, retained in office files until two years after the year in which case is closed, or two years after the senior official retires, whichever is later. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

The Inspector General, Office of the Secretary of the Air Force (SAF/IG), Pentagon, Washington, DC 20330–5000.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the Inspector General, Office of the Secretary of the Air Force (SAF/IG), Pentagon, Washington, DC 20330–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Inspector General, Office of the Secretary of the Air Force (SAF/IG), Pentagon, Washington, DC 20330–5000.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Complainants, inspectors, members of Congress, witnesses and subjects of investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt under the provisions of 5 U.S.C. 552a. However, if a person is denied any right, privilege, or benefit, he or she would otherwise be entitled to as a result of keeping this material, it must be released, unless doing so would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 92–1164 Filed 1–15–92; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Education.

ACTION: Amendment of meeting notice.

SUMMARY: This document is to notify the general public of an amendment to the Notice of Meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans which was published in the **Federal Register**, Vol. 57, No. 5, page 673 on January 8, 1992.

The location and proposed agenda items remain the same except that on January 17, the closed portion will be from 11 a.m. to 12 p.m. instead of 1 p.m. to 5 p.m. The open portion is from 1 p.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: John Florez, Executive Director, White House Initiative on Educational Excellence for Hispanic Americans, U.S. Department of Education, Washington, DC 20202. Telephone: (202) 205–2420.

Dated: January 10, 1992.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 92–1149 Filed 1–15–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC92–8–000]

Public Service Company of Colorado; Filing

January 9, 1992.

Take notice that on January 9, 1992, Public Service Company of Colorado ("Public Service") filed an application for approval under section 203 of the Federal Power Act, 16 U.S.C. 824b (1988), for the consolidation of certain facilities of Colorado-Ute Electric Association with those of Public Service. Public Service requests that the Commission authorize the application on an expedited basis, without an evidentiary hearing.

As part of the application, Public Service has filed a *pro forma* transmission service tariff. Public Service states that the tariff will allow third parties to have access to Public Service's transmission system. Public Service states that within 60 days of the consummation of the consolidation, it will file the tariff in final form, including such revisions as may be required by the Commission.

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 January 31, 1992. 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. 92–1142 Filed 1–15–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearing and Appeals

Cases Filed; Week of December 6 Through December 13, 1991

During the week of December 6 through December 13, 1991, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of energy, Washington, DC 20585.

Dated: January 10, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Dec. 6 through Dec. 13, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 9, 1991	International Brotherhood of Electrical Workers, Portsmouth, OH.	LFA–0170	Appeal of an information request denial. If Granted: The November 6, 1991 Freedom of Information request Denial issued by Oak Ridge Operations Office would be rescinded, and International Brotherhood of Electrical Workers would receive access to all certified payroll reports and the apprentice registration certificate of Jess Howard.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Dec. 6 through Dec. 13, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 10, 1991	Marks S. Boggs, Delta, CO	LFA-0171	Appeal of an information request denial. If granted: The November 29, 1991 Freedom of Information request Denial issued by the Oak Ridge Operations Office would be rescinded, and Mark S. Boggs would receive access to an accurate set of records concerning the Environmental Monitoring Reports.
Dec. 12, 1991	ARCO/Kavanaugh & Van Fleet, Inc.	RR304-21	Request for modification/rescission in the ARCO refund proceeding. If Granted: The March 20, 1990 Decision and Order (Case No. RF304-2102) issued to Kavanaugh & Van Fleet, Inc. would be modified regarding the firm's application for refund submitted in the ARCO refund.
Dec. 12, 1991	ARCO/General Equities, Inc. (Hill Oil Inc.) Washington, DC.	RR304-22	Request for modification/rescission in the ARCO refund proceeding. If Granted: The November 30, 1989 Decision and Order (Case No. RF304-6534) issued to General Equities, Inc. would be modified regarding the firm's application for refund submitted in the ARCO refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of Dec. 6 to Dec. 13, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/09/91	Slattery Group, Inc	RF336-28
12/09/91	Petroleum Fuels, Inc	RF340-35
12/09/91	James M. Beiriger Super 100.	RF342-70
12/09/91	Alfred Dickinson	RF342-71
12/09/91	(Fields) Arco Service Station.	RF304-12651
12/09/91	Chuck's Olympic View Service.	RF304-12652
12/09/91	Hunt Bros	RF304-12653
12/09/91	Harold E. Degelmann	RF304-12654
12/10/91	Farmland Industries, Inc.	RF315-10179
12/10/91	Petroleum Electronics, Inc.	RF333-21
12/10/91	Jobbers Buying Group.	RF333-22
12/10/91	Crago & Cook Enterprises.	RF333-23
12/10/91	Everdyke Oil Co	RF333-24
12/10/91	Chorba's Clark Oil	RF342-72
12/11/91	Eli Lilly and Company	RC272-151
12/11/91	Habro Service Center	RF307-10204
12/11/91	William E. Sullivan	RF307-10205
12/12/91	Ralph's Clark	RF342-73
12/06/91 thru 12/13/91.	Texaco Refund Applications Received.	RF321-18097 thru RF321-18120
12/06/91 thru 12/13/91.	Crude Oil Refund Applications Received.	RF272-90848 thru RF272-90876
12/06/91 thru 12/13/91.	Gulf Oil Refund Applications Received.	RF300-18782 thru RF272-18801

[FR Doc. 92-1197 Filed 1-15-92; 8:45 am]

BILLING CODE 6450-01-M.

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of December 23 Through December 27, 1991

During the week of December 23 through December 27, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Harry S. Hardin, III, 12/24/91, LFA-0167

Harry S. Hardin, III (Hardin) filed an Appeal from a denial by the Strategic Petroleum Reserve Project Management Office (SPRO) of the Department of Energy (DOE) of a Request for Information which had submitted under the Freedom of Information Act (FOIA). Hardin had requested award fee appraisal reports of Boeing Petroleum Services, Inc. (Boeing), a DOE contractor. SPRO released several documents pertaining to the Boeing award fee appraisal, but withheld performance evaluation committee reports pursuant to Exemption 5 of the FOIA. In considering the Appeal, DOE found that the performance evaluation committee reports are predecisional and deliberative in nature. Consequently, release of those records might hinder the frank exchange of views in the future and inaccurately reflect the views of the agency. Accordingly, Hardin's Appeal was denied.

Motion for Reconsideration

The 341 Tract Unit of the Citronelle Field; Exxon USA et al., 12/24/91, HER-0050, HER-0106, KEZ-0096

The DOE issued a Decision and Order terminating the exception relief granted in The Three Forty One (341) Tract Unit of the Citronelle Field, 10 DOE ¶ 81,027 (1983) (Citronelle). In Citronelle, the DOE, over the objections of certain refinerparticipants in the Entitlements Program, allowed the Unit to recertify a sufficient amount of its price-controlled crude oil to produce $63.8 million in additional revenues to fund a proposed tertiary project. The monies, which were subject to a repayment requirement, were placed in an escrow account from which the Unit could make withdrawals for tertiary expenses. As a result of the Unit's unwillingness to proceed with the project, the DOE terminated the exception relief. The DOE determined that (i) the Unit should be allowed to retain the approximately $20 million in benefits that it had received thus far and (ii) the funds in the escrow account should be distributed in a refund proceeding.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full tests of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Quantum Chemical Corp./Como Oil Co. et al, RF330-13, 12/24/91

Dismissals

The following submissions were dismissed:

Name	Case No.
AGA Gas, Inc	RF272-75450
Aluminum Industries, Inc	RF272-75534
American Ready Mix	RF272-59707
Broadway Texaco Service	RF321-12098
Fairfield, Farrow, Hunt, Reecer & Strotz.	LFA-173
Farm Stores, Inc	RF272-22920
Galloway Enterprises, Inc	RF272-75449
Lemmon Texaco	RF321-12142
Piper Aircraft Corp	RF272-75471
Pirolli Fuel Oil Co., Inc	RF300-11248
The Alan White Company	RF272-75038

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234,

Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 10, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–1198 Filed 1–15–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–62111; FRL–4005–4]

Model Accreditation Plan; Extension of Asbestos Accreditation Requirements to Public and Commercial Buildings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of effective date.

SUMMARY: Pursuant to section 15(c) of the Asbestos School Hazard Abatement Reauthorization Act (ASHARA), Public Law 101–637, notice is hereby given that the effective date of the requirements in the Asbestos Abatement Training Amendments have been extended from November 28, 1991, until November 28, 1992. These amendments mandate additional training and accreditation requirements for persons who work with asbestos. This extension is based upon a determination by the Agency that accredited asbestos contractors are needed to perform school-site abatement required under the Asbestos Hazard Emergency Response Act (AHERA), (15 U.S.C. 2641), and that the extension allowed under section 15(c) of ASHARA is necessary to ensure effective implementation of section 203 of the Toxic Substances Control Act (TSCA).

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: ASHARA requires the Agency to revise the model accreditation plan promulgated under section 206 of TSCA (15 U.S.C. 2646). The revised plan must increase the minimum number of training hours required for asbestos abatement workers, and extend accreditation requirements to include persons who inspect for asbestos-containing material or who design or conduct response actions with respect to friable asbestos-containing material in public and commercial buildings. In addition, ASHARA obligates contractors and other persons to comply with the revised accreditation requirements.

The original model accreditation plan was developed in consultation with affected organizations, and became codified as 40 CFR part 763, appendix C to subpart E. Its purpose was to establish minimum training requirements for those persons seeking accreditation to conduct asbestos-related work in schools. Under TSCA, accreditation is required for all persons inspecting school buildings for the presence of asbestos-containing material, developing school management plans, and designing or conducting response actions in schools. Specifically, persons so accredited are designated and referred to as inspectors, management planners, project designers, contractor/supervisors and workers respectively. ASHARA extends the accreditation requirement to all of these types of persons who work in public and commercial buildings, except management planners.

By November 28, 1991, ASHARA requires that the Agency revise the model accreditation plan, and that persons affected by the revision obtain the additional accreditation. The effective date of these requirements, however, may be extended to November 28, 1992, if the Agency determines that accredited asbestos contractors are needed to perform school-site abatement required under AHERA, and that such an extension is necessary to ensure effective implementation of section 203 of TSCA.

Addressing the first of the extension criteria, the Agency has found that the current supply of accredited project designers is insufficient to meet the current demand for such designers of both schools required to comply with AHERA and public and commercial buildings required to comply with the model accreditation plan as revised under ASHARA. A draft Regulatory Impacts Analysis (RIA) has been completed for the Asbestos Abatement Training Amendments. As a part of this RIA, estimates have been developed regarding both the supply and demand for accredited persons. It has been estimated that the current annual demand for project designers in all types of buildings exceeds the current annual supply. Because the number of accredited project designers is therefore insufficient to supply both schools and public and commercial buildings, the Agency has determined that these accredited persons are presently needed to perform the school-site abatement required under AHERA.

Regarding the second extension criteria, the Agency has also found that a 12-month extension of time is needed to ensure the effective implementation of section 203 of TSCA. TSCA section 203(g)(2) requires periodic inspections of school buildings. The regulation implementing this statutory provision, 40 CFR 763.85(b), stipulates that those reinspections take place on a triennial basis. The first triennial reinspection must occur within 3 years after a management plan is put into effect. The management plans were required to be developed by no later than May 9, 1989, with their implementation to begin by July 9, 1989. Therefore, the first round of reinspections is scheduled for completion by July 9, 1992. In order to ensure the effective implementation of the reinspections, EPA must continue to provide published reinspection guidance, protocols, and technical assistance. For example, an intensive effort was made to publish a document by the spring of 1991 entitled: *Answers to the Most Frequently Asked Questions About Reinspection.* The EPA determined that these activities are necessary to ensure that the reinspection cycle is successfully completed and that section 203 of TSCA is effectively implemented. These efforts on the part of the Agency, however, have resulted in the need to extend the timeframe for ASHARA implementation.

For the above reasons, the Agency has determined that it is necessary to extend the effective date of the ASHARA training amendments until November 28, 1992.

Dated: January 7, 1992.

William K. Reilly,

Administrator.

[FR Doc. 92–1189 Filed 1–15–92; 8:45 am]

BILLING CODE 6560–50–F

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 14]

Agency Forms Submitted for OMB Review

AGENCY: Export-Import Bank of the U.S.

ACTION: In accordance with the provisions of the Paperwork Act of 1980, Eximbank has submitted a proposed collection of information in the form of a survey to the Office of Management and Budget for review.

PURPOSE: The proposed Annual Competitiveness Report Survey of Exporters and Bankers as authorized by 12 U.S.C. 635(b), Export-Import Bank of the United States Act of 1945, as amended, is to be completed by U.S. banks and exporters familiar with Eximbank's programs as a means of evaluating the private sector's view on the extent to which Eximbank has provided export credit programs competitive with the export credit programs offered by the major foreign OECD governments.

The collection of the information will enable Eximbank to assess and report to the U.S. Congress the private sector's view of its programs' competitiveness, as required by law.

SUMMARY: The following summarizes the information collection proposal submitted to OMB:

(1) Type of requests: Renewal.

(2) Number of forms submitted: One.

(3) Form number: EIB No. 85–3 (Revised 12/91).

(4) Title of information collection: Annual Competitiveness Report Survey to Exporters and Bankers.

(5) Frequency of Use: Annual.

(6) Respondents: Commercial bankers and exporters in the United States.

(7) Estimated total number of responses: 80.

(8) Estimated total number of hours needed to fill out the form: 46.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed survey may be obtained from Helene Wall, Agency Clearance Officer, (202) 566–8111. Comments and questions should be directed to the case officer, Lin Liu, Office of Management and Budget, Information and Regulatory Affairs, room 3235, Washington, DC 20503, tel: 202–395–7340. All comments should be submitted within two weeks of the date of this notice; if you intend to submit comments but are unable to meet this deadline, please advise by telephone that comments will be submitted late.

Dated: December 19, 1991.

Helene Wall,

Agency Clearance Officer.

[FR Doc. 92–1168 filed 1–15–92; 8:45 am]

BILLING CODE 6690–01–M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Federal Supply Service (FBP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0058, Deposit Bond—Annual Sale of Government Personal Property. This form is used by a bidder participating in sales of Government personal property whenever the sales invitation permits an annual type of Deposit Bond in lieu of cash or other form of bid deposit.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden

Respondents: 1,000; annual responses: 1; average hours per response: 0.25; burden hours: 250.

FOR FURTHER INFORMATION CONTACT: William L. Tesh, Jr., (703) 557–0807.

Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: January 7, 1992.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 92–1172 Filed 1–15–92; 8:45 am]

BILLING CODE 6820–24–M

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Federal Supply Service (FBP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0057, Deposit Bond Individual—Sale of Government Personal Property. This form is used by a bidder participating in sales of Government personal property whenever the sales invitation permits an individual type of Deposit Bond in lieu of cash or other form of bid deposit.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW, Washington, DC 20405.

Annual Reporting Burden

Respondents: 500; annual responses: 1; average hours per response: 0.25; burden hours: 125.

FOR FURTHER INFORMATION CONTACT: Ed Hochard, (703) 557–0814. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F St. NW, Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: January 7, 1992.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 92–1173 Filed 1–15–92; 8:45 am]

BILLING CODE 6820–24–M

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of Acquisition Policy (VP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0240, GSAR Subpart 525.2: Buy American Act—Construction Materials. The information required to be submitted with the offer is a description of the type, quantity, and cost of the foreign construction material proposed to be used under the contract.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden

Respondents: 120; annual responses: 1; average hours per response: 1.00; burden hours: 120.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, (202) 501–1224. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: January 7, 1992.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 92–1174 Filed 1–15–92; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Substance Abuse Prevention Conference Review Committee; Establishment

Pursuant to section 501(j) of the Public Health Service Act, 42 U.S.C. 290aa(j), and the Federal Advisory Committee Act, 5 U.S.C. appendix 2, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), announces the establishment, effective January 7, 1992, of the following Office for Substance Abuse Prevention initial review committee: Substance Abuse Prevention Conference Review Committee.

The duration of this committee is continuing unless formally determined by the Administrator, ADAMHA, that termination would be in the best public interest.

Dated: January 9, 1992.

Frederick K. Goodwin,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92–1160 Filed 1–15–92; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Circulatory System Devices Panel of the Medical Devices Advisory Committee

Date, Time, and Place

February 3 and 4, 1992, 8:30 a.m., Rm. 503–529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of Meeting and Contact Person

Open public hearing, February 3, 1992, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed presentation of data, 3 p.m. to 4 p.m.; open public hearing, February 4, 1992, 8:30 a.m. to 9:30 a.m. unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed presentation of data, 3 p.m. to 4 p.m.; closed committee deliberations, 4 p.m. 4:30 p.m.; Wolf Sapirstein, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1205.

General Function of the Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

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 contract person before January 20, 1992, 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

The committee will discuss premarket approval applications for one or more implantable cardioverter defibrillator devices.

Closed Presentation of Data

The committee will discuss trade secret and/or confidential commercial information regarding the devices listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed Committee Deliberations

The committee will discuss trade secret and/or confidential commercial information regarding the devices listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee

Date, Time, and Place

February 21, 1992, 12:30 p.m., Days Inn, Downtown/Convention Center, 1201 K St. NW., Washington, DC 20005.

Type of Meeting and Contact Person

Open public hearing, 12:30 p.m. to 1:30 p.m., unless public participation does not last that long; closed presentation of data, 1:30 p.m. to 1:45 p.m.; open committee discussion. 1:45 p.m. to 2:30 p.m., unless public participation does not last that long; Marie A. Schroeder, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1036.

General Function of the Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open Public Hearing

Interested persons may 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 February 14, 1992, 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

The committee will discuss premarket approval applications for a prosthetic knee ligament device.

Closed Presentation of Data

The committee may discuss trade secret or confidential commercial information regarding materials, design, and/or manufacturing information for the premarket approval application for a prosthetic knee ligament device. This portion of the meeting 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 will be available 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 will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, 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, notably deliberative session 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: January 9, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 92–1161 Filed 1–15–92; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Dermatologic Drugs Advisory Committee scheduled for January 23 and 24, 1992. The meeting was announced by notice in the **Federal Register** of December 12, 1991 (56 FR 64792).

FOR FURTHER INFORMATION CONTACT: Elaine Osier, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

Dated: January 13, 1992

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–1211 Filed 1–15–92; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Meeting of the National Advisory Council for Human Genome Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Center for Human Genome Research, January 27, 1992, in the Old Georgetown Room of the Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland.

This meeting will be open to the public on January 27, 1992 from 8:30 a.m. to 9:30 a.m. to discuss administrative details or other issues relating to committee activities as indicated in the notice. 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 will be closed to the public on January 27, 1992 from 9:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published later than the 15 days prior to the meeting due to the difficulty of coordinating schedules.

Dr. Elke Jordan, Deputy Director, National Center for Human Genome Research, National Institutes of Health, Building 38A, Room 605. Bethesda, Maryland 20892, (301) 496–0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–1293 Filed 1–15–92; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meetings

Notice of Meetings of the National Cancer Advisory Board and its Subcommittees Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, and its Subcommittees on January 26–28, 1992. The full Board will meet in Conference Room 10, 6th Floor, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Except as noted below, the meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

A portion of the Board meeting will be closed to the public 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. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, room 10A06, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and roster of the Board members, upon requests.

Name of Committee: National Cancer Advisory Board
Executive Secretary: Mrs. Barbara Bynum, Building 31, room 10A03, Bethesda, MD 20892; (301) 496–5147
Dates of Meeting: January, 26, 27 and 28, 1992
Place of Meeting: Building 31C, Conference Room 10
Open: January 27—8 a.m. to approximately 12 noon
Agenda: Reports on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; and Scientific Presentations; Subcommittee Reports; and New Business.
Closed: January 27—1 p.m. to recess
Agenda: For review and discussion of individual grant applications.
Open: January 28—10 a.m. to adjournment
Agenda: Policy and Scientific Presentations, Subcommittee Reports; and New Business.
Name of Committee: Subcommittee on Cancer Centers
Executive Secretary: Dr. Brian Kimes, Executive Plaza North, room 300, Bethesda, MD 20892; (301) 496–8537
Date of Meeting: January 26, 1992
Place of Meeting: Hyatt Regency Hotel, Room to be Posted in Hotel Lobby, One Metro Center, Bethesda, MD 20814
Open: 8 p.m.—until adjournment
Agenda: To discuss Cancer Centers Guidelines and Budget CAPS for Cancer Centers.
Name of Committee: Subcommittee on Information and Cancer Control for the Year 2000
Executive Secretary: Mr. Paul Van Nevel, Building 31, room 10A31, Bethesda, MD 20892; (301) 496–6631
Date of Meeting: January 28, 1992
Place of Meeting: Building 31C, Conference 8
Open. 7:30 a.m. to adjournment
Agenda: TBA
Name of Committee: Subcommittee on Planning and Budget
Executive Secretary: Ms. Iris Schneider, Building 31, room 11A48, Bethesda, MD 20892; (301) 496–5534.
Date of Meeting: January 28, 1992
Place of Meeting: Building 31C, Conference Room 9
Open: 8 a.m. to adjournment
Agenda: To discuss FY 1992 appropriation, FY 1994 By-Pass, NCAB Biennial Report; and NIH Strategic Plan.
Name of Committee: Subcommittee on Women's Health and Cancer
Executive Secretary: Ms. Iris Schneider, Building 31, room 11A48, Bethesda, MD 20892; (301) 496–5534.
Dates of Meeting: January 28, 1992
Place of Meeting: Building 31C, Conference 8
Open: 9 a.m. to adjournment
Agenda: Future plans for special activities.

(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: January 6, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–1148 Filed 1–15–92; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Research Training Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Research Training Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on March 1, 2, and 3, 1992, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

This meeting will be open to the public on March 1, from 7:30 p.m. to approximately 8:30 p.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is 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 will be closed to the public on March 1, 1992, from 8:30 p.m. to 10 p.m., on March 2, from approximately 8 a.m. until 6 p.m. and on March 3, from 8 a.m. until 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.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Kathryn Ballard, Scientific Review Administrator, NHLBI, Westwood Building, Room 550, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program 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: January 6, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–1145 Filed 1–15–92; 8:45 am]

BILLING CODE 4140–01–M

Meetings of the National Deafness and Other Communications Disorders Advisory Council and its Research Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the National Deafness and Other Communication Disorders Advisory Council and its Research Subcommittee on January 29–31, 1992, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The meeting of the full Council will be held in Conference Room 6, Building 31C, and that of the subcommittee in Conference Room 7, Building, 31C.

The meeting of the full Council will be open to the public on January 30 from 8:30 a.m. until recess at approximately 4 p.m. for a report from the Institute Director and discussion of extramural policies and procedures at the National Institutes of Health and the National Institute on Deafness and Other Communication Disorders.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sections 10(d) of Public Law 92–463, the entire meeting of the Research Subcommittee on January 29 will be closed to the public. The meeting of the full Council

will be closed to the public on January 31 from 9 a.m. until adjournment. The closed portions of the meetings will be for the review, discussion, and evaluation of individual grant applications. The applications and 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.

Further information concerning the Council and Subcommittee meetings may be obtained from Dr. John C. Dalton, Executive Secretary, National Institute on Deafness and Other Communication Disorders, Executive Plaza South, room 400B, National Institutes of Health, Bethesda, Maryland 20892, 301–496–8693. A summary of the meetings and rosters of the members may also be obtained from his office.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders.)

Dated: January 6, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–1147 Filed 1–15–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke; Meeting

Pursuant to Public Law 92–463, notice is hereby given of meetings of committees of the National Institute of Neurological Disorders and Stroke.

These meetings will be open to the public to discuss program planning, program accomplishments and special reports or other issues relating to committee business as indicated in the notice. The first hour of the Council meeting on February 6 will be devoted to the preparation of written comments on the NINDS contribution to the biennial report of the Director, NIH, to Congress. A discussion of the document will follow. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sections 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual 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, the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Acting Executive Secretary or the Scientific Review Administrator indicated.

Name of Committee: The Planning Subcommittee of the National Advisory Neurological Disorders and Stroke Council
Date: February 5, 1992
Place: National Institutes of Health, Building 31, Conference Room 8A28, 9000 Rockville Pike, Bethesda, MD 20892
Open: 1 p.m.—3 p.m.
Closed: 3 p.m.—recess
Name of Committee: National Advisory Neurological Disorders and Stroke Council
Dates: February 6–7, 1992
Place: National Institutes of Health, Shannon Building, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892
Open: February 6, 8 a.m.—1 p.m.
Closed: February 6, 1 p.m.—recess; February 7, 8:30 a.m.—adjournment
Acting Executive Secretary: Edward M. Donohue, Acting Director, Division of Extramural Activities, NINDS, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–4188
Name of Committee: Neurological Disorders Program Project Review A Committee
Dates: February 1, 2 and 3, 1992
Place: The Pointe-Hilton at Squaw Peak, 7677 N. 16th Street, Phoenix, AZ 85020
Open: February 1, 1992, 7:30 p.m.—8 p.m.
Closed: February 1, 8 p.m.—recess; February 2, 8:30 a.m.—recess; February 3, 8:30 a.m.—adjournment
Scientific Review Adminstrator: Dr. Katherine Woodbury, Federal Building, Room 9C–10, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9223
Name of Committee: Training Grant and Career Development Review Committee
Dates: February 20, and 21, 1992
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814
Open: February 20, 8 p.m.—8:30 p.m.
Closed: February 20, 8:30 p.m.—recess; February 21, 8 a.m.—adjournment
Scientific Review Administrator: Dr. Herbert Yellin, Federal Building, Room 9C–10, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9223
Name of Committee: Neurological Disorders Program Project Review B Committee
Dates: February 24, 25 and 26, 1992
Place: Hotel Washington, 15th and Pennsylvania Avenue, NW., Washington, DC 20004
Open: February 24, 7: 30 p.m.—8:00 p.m.
Closed: February 24, 8:00 p.m.—recess; February 25, 8:30 a.m.—recess; February 26, 8:30 a.m.—adjournment
Scientific Review Administrator: Dr. Paul Sheehy, Federal Building, Room 9C–10, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9223.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences).

Dated: January 6, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–1146 Filed 1–15–92; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following study sections for January through February 1992, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter 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 92–4673, 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.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each scientific review administrator, room number, and telephone number are listed below each study section. Since it is necessary to

schedule study section meetings months in advance, it is suggested that anyone planing to attend a meeting contact the scientific review administrator to confirm the exact date, time and location. All times are a.m. unless otherwise specified.

Study section	January-February 1992 meetings	Time	Location
Allergy & Immunology, Mr. Howard M. Berman, Rm. A19, Tel. 301-496-7380	Jan. 22-24	8:30	Doubletree Resort Hotel, at Fisherman's Wharf, Monterrey, CA.
Bacteriology & Mycology-1, Dr. Timothy J. Henry, Rm. 236B, Tel. 301-496-7340	Feb. 19-21	8:30	Hyatt Regency Hotel, Bethesda, MD.
Bacteriology & Mycology-2, Dr. William Branche, Jr., Rm. 236A, Tel. 301-496-7682	Feb. 12-14	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Behavioral Medicine, Ms. Carol Campbell, Rm. 306B, Tel. 301-496-7109	Feb. 4-6	8:00	Holiday Inn, Chevy Chase, MD.
Biochemical Endocrinology, Dr. Michael Knecht, Rm. 204, Tel. 301-496-7430	Feb. 5-7	8:30	Hyatt Regency Hotel, Bethesda, MD.
Biochemistry, Dr. Adolphus P. Toliver, Rm. 318B, Tel. 301-496-7516	Feb. 14-16	8:30	Doubletree Hotel, Houston, TX.
Bio-Organic & Natural Products Chemistry, Dr. Harold Radtke, Rm. 2A07, Tel. 301-496-8823.	Feb. 27-29	8:30	Holiday Inn, Chevy Chase, MD.
Biophysical Chemistry, Dr. John Beisler, Rm. 334, Tel. 301-496-7070	Feb. 6-8	8	Harvey Suites Hotel, Houston, TX.
Bio-Psychology, Dr. A. Keith Murray, Rm. 325, Tel. 301-496-7058	Feb. 4-6	9	Omni Georgetown Hotel, Washington, DC.
Cardiovascular, Dr. Gordon L. Johnson, Rm. 439A, Tel. 301-496-7316	Feb. 19-21	8	Ramada Inn, Bethesda, MD.
Cardiovascular & Renal, Dr. Anthony Chung, Rm. 353, Tel. 301-496-7901	Feb. 10-11	8:30	Holiday Inn, Chevy Chase, MD.
Cellular Biology and Physiology-1, Dr. Gerald Greenhouse, Rm. 336, Tel. 301-496-7396.	Feb. 5-7	8	American Inn, Bethesda, MD.
Cellular Biology and Physiology-2, Dr. Gerhard Ehrenspeck, Rm. 1A05, Tel. 301-496-7681.	Feb. 24-26	8:30	Holiday Inn, Bethesda, MD.
Chemical Pathology, Dr. Edmund Copeland, Rm. 322, Tel. 301-496-7078	Feb. 19-21	8	Holiday Inn, Bethesda, MD.
Diagnostic Radiology, Dr. Catharine Wingate, Rm. 357, Tel. 301-496-7650	Feb. 24-26	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Endocrinology, Dr. Harry Brodie, Rm. 218, Tel. 301-496-7346	Feb. 5-7	9	Hyatt Regency Hotel, Bethesda, MD.
Epidemiology & Disease Control-1, Dr. Scott Osborne, Rm. 203C, Tel. 301-496-7246	Feb. 5-7	8:30	Hyatt Regency Hotel, Bethesda, MD.
Epidemiology & Disease Control-2, Dr. H. M. Stiles, Rm. 203B, Tel. 301-496-7246	Feb. 5-7	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Experimental Cardiovascular Sciences, Dr. Richard Peabody, Rm. 434, Tel. 301-496-7940.	Feb. 12-14	8:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Experimental Immunology, Dr. Calbert Laing, Rm. A27, Tel. 301-496-7238	Feb. 19-21	8:30	Holiday Inn, Georgetown, DC.
Experimental Therapeutics-1, Dr. Philip Perkins, Rm. 221, Tel. 301-496-7839	Feb. 3-5	8:30	Keystone Resort Hotel, Keystone, CO.
Experimental Therapeutics-2, Dr. Marcia Litwack, Rm. 207, Tel. 301-496-8848	Feb. 3-5	8:00	Keystone Resort Hotel, Keystone, CO.
Experimental Virology, Dr. Garrett V. Keefer, Rm. 206, Tel. 301-496-7474	Feb. 24-26	8:30	NIH, Room 8, Bldg. 31C, Bethesda, MD.
General Medicine A-1, Dr. Harold Davidson, Rm. 354A, Tel. 301-496-7797	Feb. 26-28	1 p.m.	Inn of Maples, Maples, FL.
General Medicine A-2, Dr. Mushtaq Khan, Rm. 354B, Tel. 301-496-7140	Feb. 7-9	8	Holiday Inn, Taos, NM.
General Medicine B, Dr. Daniel McDonald, Rm. 220, Tel. 301-496-7730	Feb. 10-12	8	Holiday Inn, Chevy Chase, MD.
Genetics, Dr. David Remondini, Rm. 225, Tel. 301-496-7271	Feb. 13-15	9	Holiday Inn, Bethesda, MD.
Genome, Dr. Cheryl Corsaro, Rm. 2A15, Tel. 301-496-7866	Feb. 19-21	9	Holiday Inn Crowne Plaza, Rockville, MD.
Hearing Research, Dr. Joseph Kimm, Rm. 1A03, Tel. 301-496-7494	Feb. 19-21	8:30	Hyatt Regency Hotel, Bethesda, MD.
Hematology-1, Dr. Clark Lum, Rm. 355A, Tel. 301-496-7508	Feb. 20-22	8	Hyatt Regency Hotel, Bethesda, MD.
Hematology-2, Dr. Jerrold Fried, Rm. 355B, Tel. 301-496-7508	Feb. 19-21	8:30	Ramada Inn, Bethesda, MD.
Human Development & Aging-1, Dr. Teresa Levitin, Rm. 303, Tel. 301-496-7025	Feb. 19-21	9	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Human Development & Aging-2, Dr. Samuel Rawlings, Rm. 305, Tel. 301-496-7640	Feb. 12-14	8	Hilton Hotel, San Juan, PR.
Human Development & Aging-3, Dr. Anita Sostek, Rm. 319C, Tel. 301-496-8814	Feb. 24-26	9	Omni Shoreham Hotel, Washington, DC.
Human Embryology & Development, Dr. Arthur Hoversland, Rm. 219B, Tel. 301-496-7597.	Feb. 18-19	8	Holiday Inn, Chevy Chase, MD.
Immunobiology, Dr. William Stylos, Rm. A27, Tel. 301-496-7780	Feb. 19-21	8:30	Holiday Inn, Chevy Chase, MD.
Immunological Sciences, Dr. Anita Corman Weinblatt, Rm. A25, Tel. 301-496-7179	Feb. 26-28	8:30	Holiday Inn, Georgetown, DC.
Lung Biology and Pathology, Dr. Anne Clark, Rm. A10, Tel. 301-496-4673	Feb. 10-12	8	Holiday Inn, Chevy Chase, MD.
Mammalian Genetics, Dr. Jerry Roberts, Rm. 234, Tel. 301-402-1462	Feb. 20-22	8:30	Holiday Inn, Bethesda, MD.
Medical Biochemistry, Dr. Alexander Liacouras, Rm. 318A, Tel. 301-496-7517	Feb. 6-8	8:30	Doubletree Hotel, Houston, TX.
Medicinal Chemistry, Dr. Ronald Dubois, Rm. 2A06, Tel. 301-496-7107	Feb. 12-14	8:30	Holiday Inn, Chevy Chase, MD.
Metabolic Pathology, Dr. Marcelina Powers, Rm. 435, Tel. 301-496-5251	Feb. 18-20	8	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Metabolism, Dr. Krish Krishnan, Rm. 339A, Tel. 301-496-7091	Feb. 12-14	8	Holiday Inn Crowne Plaza, Arlington, VA.
Metallobiochemistry, Dr. Edward Zapolski, Rm. 335, Tel. 301-496-7733	Feb. 27-29	8:30	Omni Georgetown Hotel, Washington, DC.
Microbial Physiology & Genetics-1, Dr. Martin Slater, Rm. 238, Tel. 301-496-7183	Feb. 26-28	8:30	River Inn, Washington, DC.
Mircobial Physiology & Genetics-2, Dr. Gerald Liddel, Rm. 226, Tel. 301-496-7130	Feb. 12-14	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Molecular & Cellular Biophysics, Dr. Nancy Lamontagne, Rm. 326, Tel. 301-496-7060	Feb. 27-29	8	One Washington Circle Hotel, Washington, DC.
Molecular Biology, Dr. Robert Su, Rm. 233, Tel. 301-496-7830	Feb. 13-15	8	Holiday Inn, Georgetown, DC.
Molecular Cytology, Dr. Ramesh Nayak, Rm. 233B, Tel. 301-496-7149	Feb. 6-7	8	Holiday Inn, Chevy Chase, MD.
Neurological Sciences-1, Dr. Andrew Mariani, Rm. 319A, Tel. 301-496-7279	Feb. 19-21	8:30	One Washington Circle Hotel, Washington, DC.
Neurological Sciences-2, Dr. Stephen Gobel, Rm. 304, Tel. 301-496-8808	Feb. 12-14	8	Yosemite Lodge, Yosemite, CA.
Neurology A, Dr. Joe Marwah, Rm. 303A, Tel. 301-496-7095	Feb. 27-29	8:30	The Governor's House, Washington, DC.
Neurology B-1, Dr. Lawrence Sellin, Rm. 306A, Tel. 301-496-7846	Feb. 11-13	8:30	Hotel Washington, Washington, DC.
Neurology B-2, Dr. Herman Teitelbaum, Rm. 321, Tel. 301-496-7422	Feb. 18-20	8:30	Holiday Inn, Chevy Chase, MD.
Neurology C, Dr. Kenneth Newrock, Rm. 232, Tel. 301-496-5591	Feb. 12-14	8:30	Omni Georgetown Hotel, Washington, DC.
Nursing Research, Dr. Gertrude McFarland, Rm. 352, Tel. 301-496-0558	Feb. 24-26	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Nutrition, Dr. Sooja Kim, Rm. 348, Tel. 301-496-7178	Feb. 10-12	8:30	Sheraton Potomac Inn, Rockville, MD.
Oral Biology & Medicine-1, Dr. Larry Pinkus, Rm. 219A, Tel. 301-496-7818	Feb. 10-13	8:30	Holiday Inn, Chevy Chase, MD.
Oral Biology & Medicine-2, Dr. Larry Pinkus, Rm. 219B, Tel. 301-496-7818	Feb. 3-6	8:30	Holiday Inn, Chevy Chase, MD.
Orthopedics & Musculoskeletal, Ms. Ileen Stewart, Rm. 350, Tel. 301-496-7581	Feb. 5-7	8:30	Hyatt Regency Hotel, Rosslyn, VA.
Pathobiochemistry, Dr. Zakir Bengali, Rm. 320, Tel. 301-496-7820	Feb. 12-14	8:30	The Savoy Suites Hotel, Washington, DC, Rockville, MD.

Study section	January-February 1992 meetings	Time	Location
Pathology A, Dr. Jaswant Bhorjee, Rm. 337, Tel. 301-496-7305	Jan. 29-31	7:30 p.m.	Ramada Inn, Taos, NM.
Pathology B, Dr. Martin Padarathsingh, Rm. A26, Tel. 301-496-7244	Jan. 28-31	7:30 p.m.	Ramada Inn, Taos, NM.
Pharmacology, Dr. Joseph Kaiser, Rm. 206, Tel. 301-496-7408	Feb. 19-21	8:30 p.m.	American Inn, Bethesda, MD.
Physical Biochemistry, Dr. Gopa Rakhit, Rm. 349A, Tel. 301-496-7120	Feb. 23-25	7:30	Holiday Inn Crowne Plaza, Rockville, MD.
Physiological Chemistry, Dr. Jerry Critz, Rm. 339B, Tel. 301-496-7837	Feb. 14-16	8:30	Doubletree Hotel, Houston, TX.
Physiology, Dr. Michael A. Lang, Rm. 209, Tel. 301-496-7878	Feb. 19-21	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Radiation, Dr. Paul Strudler, Rm. 328, Tel. 301-496-7073	Feb. 3-5	8:30	Holiday Inn, Taos, NM.
Reproductive Biology, Dr. Dharam Dhindsa, Rm. 210, Tel. 301-496-7318	Feb. 10-12	8	Holiday Inn, Bethesda, MD.
Reproductive Endocrinology, Dr. Abubakar A. Shaikh, Rm. 325B, Tel. 301-496-8857	Feb. 3-5	8	Holiday Inn Crowne Plaza, Rockville, MD.
Respiratory & Applied Physiology, Dr. Everett Sinnett, Rm. 218A, Tel. 301-496-7320	Feb. 11-13	8	Holiday Inn, Chevy Chase, MD.
Safety & Occupational Health, Dr. Gopal Sharma, Rm. 219C, Tel. 301-496-6723	Feb. 12-14	8	Hyatt Regency Hotel, Bethesda, MD.
Sensory Disorders & Language, Dr. Jane Hu, Rm. 309, Tel. 301-496-7605	Feb. 5-7	8:30	Holiday Inn Capitol Hill, Washington, DC.
Social Sciences & Population, Dr. Samuel Rawlings, Rm. 307, Tel. 301-496-7906	Feb. 6-7	9	Holiday Inn, Chevy Chase, MD.
Surgery & Bioengineering, Dr. Paul F. Parakkal, Rm. 437, Tel. 301-496-7506	Feb. 17-18	8	Holiday Inn, Chevy Chase, MD.
Surgery, Anesthesiology & Trauma, Dr. Keith Kraner, Rm. 439, Tel. 301-496-7771	Feb. 19-21	2 p.m.	Holiday Inn, Bethesda, MD.
Toxicology-1, Dr. Alfred Marozzi, Rm. 205, Tel. 301-496-7570	Feb. 10-12	8	American Inn, Bethesda, MD.
Toxicology-2, Dr. Alfred Marozzi, Rm. 205, Tel. 301-496-7570	Feb. 12-14	8	American Inn, Bethesda, MD.
Tropical Medicine & Parasitology, Dr. Jean Hickman, Rm. 1A03, Tel. 301-496-1190	Feb. 11-13	8	Holiday Inn, Bethesda, MD.
Virology, Dr. Bruce Maurer, Rm. 2A06, Tel. 301-496-7605	Feb. 13-15	8:30	The Savoy Suites Hotel, Washington, DC.
Visual Sciences A, Dr. Anita Suran, Rm. 325B, Tel. 301-496-7000	Feb. 26-28	8	Holiday Inn, Bethesda, MD.
Visual Sciences B, Dr. Leonard Jakubczak, Rm. 325C, Tel. 301-496-7251	Feb. 19-21	8:30	Omni Georgetown Hotel, Washington, DC.
Visual Sciences C, Dr. Allen Dearry, Rm. 319B, Tel. 301-496-7795	Feb. 23-25	8:30	Tenaya Lodge, Yosemite, CA.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 6, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-1144 Filed 1-15-92; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-92-976]

Office of the Regional Administrator—Regional Housing Commissioner; Acting Manager, Region IV (Atlanta); Designation for Coral Gables Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Coral Gables Office.

EFFECTIVE DATE: November 19, 1991.

FOR FURTHER INFORMATION CONTACT: Charles A. Lipthrott, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, room 634, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303-3388, 404-331-5199.

Designation of Acting Manager for Coral Gables Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Manager.
2. Chief, Property Disposition Branch.
3. Chief, Loan Management Branch.
4. Chief, Mortgage Credit Branch.
5. Chief, Valuation Branch.

This designation supersedes the designation effective December 31, 1987, (53 FR 646, January 11, 1988). (Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971)).

This designation shall be effective as of November 19, 1991.

Orlando L. Lorie,

Manager, Coral Gables Office.

Raymond A. Harris,

Regional Administrator, Regional Housing Commissioner, Office of the Regional Administrator.

[FR Doc. 92-1113 Filed 1-15-92; 8:45 am]

BILLING CODE 4210-01-M

Office of Administration

[Docket No. N-92-3374]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of

respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 8, 1992.

John T. Murphy,

Director, Information Resources Management Policy and Management Division.

Proposal: HOPE for Homeownership of Single Family Homes (HOPE 3)–FR–2968.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: The information is necessary so that applicants can apply and compete for the grant funding opportunities. The information provided in the application will be accessed by HUD staff to determine the relative merits of each proposal. HUD will review the information provided by the applicants against the selection criteria contained in Section 315 of the notice in order to rate and rank the applications and select individual applications for funding.

Form Number: HUD–40086–A.

Respondents: State or local government and non-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	400		1.75		23.06		16,140
Recordkeeping	200		1		8		1,600

Total Estimated Burden Hours: 17,740.

Status: New.

Contact: John Garrity, HUD, (202) 708–0324, Jennifer Main, OMB, (202) 395–6880.

Dated: January 8, 1992.

Proposal: Rental Rehabilitation Program-Rent Verification Survey.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: Investor owners participating in the Rental Rehabilitation Program (RRP) will be requested to supply information on rents charged on units rehabilitated with RRP funds. The results of the annual survey will be provided to Congress in the Department's annual report on the program.

Form Number: None.

Respondents: Individuals or households and non-profit institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Rent Verification Survey	1,100		1		.25		275

Total Estimated Burden Hours: 275.

Status: Reinstatement.

Contact: Franklin Price, HUD, (202) 708–1296, Jennifer Main, OMB, (202) 395–6880.

Dated: January 8, 1992.

[FR Doc. 92–1112 Filed 1–15–92; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–3284; FR–3089–N–03]

HUD-Administered State Rental Rehabilitation Programs; Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Community Planning and Development, 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 competitions for funding under the notice of funding availability for the HUD-Administered State Rental Rehabilitation Programs for fiscal year 1991. The announcement contains the names of the award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: David Cohen, Director, Office of Affordable Housing Programs, room 7168, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone (202) 708-2685. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On July 25, 1991, the Department published a notice (56 FR 34098) announcing funds available by competition to units of local government for rental housing rehabilitation in States that chose not to administer the Rental Rehabilitation Program (RRP) in FY 1991. That notice identified the following States that elected not to administer the Rental Rehabilitation Program and the amount of rental rehabilitation grant funds available in those States:

Arkansas	$342,000
California	1,689,000
Florida	572,000
Hawaii	36,000
Nevada	51,000
North Dakota	76,000
Oregon	279,000
Total	3,045,000

On July 31, 1991, the Department published another notice (56 FR 36164) stating that, in addition to the funds announced in the July 25, 1991 notice, a total of $269,000 in rental rehabilitation grant funds was being made available to localities in Puerto Rico.

The following table announces the results of the competitions. Applications were scored and selected for funding on the basis of the selection criteria contained in the July 25, 1991 notice.

Recipients	Amount
Arkansas	$342,000
Fayetteville	31,000
Springdale	40,000
Texarkana	31,000
West Helena	150,000
West Memphis	90,000
California	[1] 1,836,000
Alameda	70,000
Alameda County	110,000
Corona	80,000
Costa Mesa	70,000
El Centro	80,000
Eureka	150,000
Merced	100,000
Modesto	80,000
Redding	125,000
Redwood City	91,000
Richmond	115,000
Salinas	80,000
San Leandro	60,000
Shasta County	100,000
South San Francisco	60,000
Vacaville	145,000
Vallejo	100,000
Visalia	50,000
Watsonville	100,000
Westminster	70,000
Florida	[2] 632,000
Delray Beach	53,170
Fort Myers	50,000
Indian River County	52,000
Key West	54,500
Largo	51,940
Melbourne	53,530
Monroe County	53,460
Ocala	54,030
Okaloosa County	51,440
Panama City	53,960
Seminole County	51,810
Titusville	52,160
North Dakota	76,000
Grand Forks	76,000
Oregon	[3] 279,000
Albany	64,000
Coos Bay	71,000
Corvallis	12,000
Klamath Falls	68,000
Medford	64,000
Puerto Rico	[4] 193,609
Cayay	151,109
Vega Baja	42,500

[1] The amount published in the July 25, 1991 notice for California was $1,689,000. An additional $147,000 became available when two localities decided not to accept their less-than-$50,000 formula allocations (Costa Mesa—$37,000 and Redwood City—$23,000) and the allocations for Hawaii ($36,000) and for Nevada $51,000) were added to the amount for California. (There was no interest from localities in Hawaii and Nevada to participate in the Program.)

[2] The amount published in the July 25, 1991 notice for Florida ($572,000) was increased by $60,000 when the City of Tallahassee failed to submit an approvable program description.

[3] In addition to the FY 1991 funds of $279,000, $60,000 in FY 1990 RRP funds and $129,210 in FY 1989 RRP funds were available for competition in Oregon. These funds were awarded to:

Coos Bay—$64,605 (FY 1989 funds)

Corvallis—$124,605 ($64,605 in FY 1989 funds and $60,000 in FY 1990 funds)

[4] Only $193,609 was applied for by localities in Puerto Rico.

Dated: January 13, 1992.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 92-1215 Filed 1-15-92; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-02-4740-10-CDLE]

Temporary Closure of Public Lands in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Temporary Closure of Public Lands in San Bernardino County, CA.

SUMMARY: Notice is hereby given that certain Public Lands in California that were previously used as courses and starting, pitting, and spectator areas for the Barstow to Las Vegas Motorcycle Race, will be closed from November 25, 1992 through November 30, 1992 to all motorized vehicles. This closure begins on Public Lands north of I–15 in the Alvord Road area. From this location the closure covers the various routes and pit areas of previous Barstow to Vegas races, traveling in a generally northeasterly direction to the Nevada State border.

Order: Effective at 0001 hours (12:01 a.m. p.s.t.) Wednesday November 25, 1992 through 2400 hours (Midnight, p.s.t.) Monday November 30, 1992, all Public Lands in California used for course routes, starting, pitting, and spectator areas for the Barstow to Las Vegas motorcycle race will be closed to vehicles. The legal land descriptions for the start, spectator, and pit areas affected by this closure are as follows:

All Public Lands within:

San Bernardino Baseline and Meridian:

T.10 N, R.3 E, secs. 1, 3, 11, 12, 14.
T.10 N, R.4 E, secs. 6, 7.
T.11 N, R.3 E, secs. 1, 2, 10, 11, 12, 14, 15, 22, 23, 24, 26, 27, 34, 35.
T.11 N, R.4 E, secs. 6, 8, 18, 19, 20, 30, 31, 32.
T.12 N, R.3 E, secs. 22, 23, 24, 26, 27, 34.
T.12 N, R.4 E, secs. 19, 20, 30, 32.
T.15 N, R.8 E, secs. 19, 20, 29, 30.
T.12 N, R.7 E, secs. 11, 12, 13, 14.
T.15 N, R.10 E, secs. 2, 3, 10, 11.
T.17 N, R.15 E, sec. 7.

The closure does not affect vehicles traveling on the following roads:

1. California State Highway 127.
2. Basin Road.
3. Rasor Road.
4. Kingston Road (Also known as Excelsior Mine Road).

A map showing vehicle routes of travel affected by this closure is available from any of the offices listed below.

No person may use, drive, move, transport, let stand, park, or have charge or control over any type of motorized vehicle within this closure area or on closed routes.

Exemptions to this order are granted to the following:

Employees of valid right-of-way holders in the course of duties associated with the right-of-way.

Holders of valid lease(s) and/or permit(s) and their employees in the course of duties associated with the lease and/or permit.

Employees of Bond Gold Colosseum in the course of duties associated with the Colosseum mine. This includes suppliers making deliveries to the Colosseum mine with proof of impending delivery.

All other exemptions to this order are by written authorization of the California Desert District Manager. Person(s) seeking an exemption must submit their requests in writing to the California Desert District Manager (6221 Box Springs Blvd., Riverside, CA 92507). The requests must include a detailed description outlining the purpose or need for the exemption, specific areas to be used, and the dates of the exemption. To be considered, exemption requests must be postmarked by Saturday, March 14, 1992. Requests postmarked after that day will not be considered.

BACKGROUND: The purpose of this temporary closure is to protect all Public Land resources on or adjacent to Barstow to Las Vegas race courses and associated areas from the impacts of large scale unmanaged vehicle use. A temporary closure order prohibiting vehicle use on previously used routes and start, pit and spectator areas, was enacted in 1990 and 1991 to prevent unauthorized vehicle use on the B–V corridor and the associated adverse environmental impacts. Four individuals were convicted in Federal Court of violating the 1990 closure order and were fined $850 each. Two others pled guilty before a local magistrate and both were fined $250. Charges are pending against two individuals who were arrested for violating the closure order in 1991.

Resources most critical to the areas affected by this closure are the desert tortoise and its habitat. The desert tortoise is listed as a threatened species under the Federal Endangered Species Act and is afforded increased protection under the terms of the Act. The environmental assessment prepared for this action has shown there will be no significant impacts to recreational use or the natural environment as a result of this closure.

EFFECTIVE DATE: This closure will be in effect from 0001 hours (12:01 a.m., p.s.t.) Wednesday, November 25, 1992 through

2400 hours (Midnight, p.s.t.) Monday, November 30, 1992.

FOR FURTHER INFORMATION CONTACT:
District Manager, California Desert District, 6221 Box Springs Blvd., Riverside, CA 92507–0714, (714) 697-5200.
Area Manager, Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311, (619) 256-3591.
Area Manager, Needles Resource Area, 101 W. Spikes Rd., Needles, CA 92363, (619) 326–3896.

SUPPLEMENTARY INFORMATION: The environmental assessment and maps showing the areas and routes affected by this closure order are available by contacting the aforementioned offices.

Authority for this temporary closure order is found in 43 CFR 8364.1. Violation of this closure is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

Dated: January 10, 1992.

Gerald E. Hillier,

District Manager, California Desert.

[FR Doc. 92–1156 Filed 1–15–92; 8:45 am]

BILLING CODE 4310–40–M

[UT–020–92–4212–24; U–68279]

Salt Lake District; Application to Purchase Federally Owned Mineral Interests

ACTION: Application to Purchase Federally Owned Mineral Interests.

AGENCY: Bureau of Land Management, Department of the Interior.

SUMMARY: Notice is hereby given that pursuant to section 209 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1719), an application has been filed for the purchase of all Federally owned mineral interests, excluding oil and gas, within the following land description:

Salt Lake Meridian

T. 12 N., R. 4 W.
Section 6, lots 2, 3, 10
Containing 49.50 acres.

It has been determined that there are no known mineral values in the subject lands except that the lands have been classified as prospectively valuable for oil and gas.

Publication of this notice in the **Federal Register** segregates the mineral interests owned by the United States from appropriation under the mining and mineral leasing laws. The segregative effect shall terminate 270 days from the publication of this notice or upon final disposition of this action, whichever occurs first.

FOR FURTHER INFORMATION CONTACT:
Janice MaChipiness, Bear River Resource Area Realty Specialist, 2370 South 2300 West, Salt Lake City, Utah 84119, or call at (801) 977–4300.

Deane H. Zeller,

District Manager.

[FR Doc. 92–1151 Filed 1–15–92; 8:45 am]

BILLING CODE 4310–DQ–M

[WY–920–41–5700; WYW112953]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

January 9, 1992.

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW112953 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW112953 effective October 1, 1991, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Florence R. Speltz,

Supervisory Land Law Examiner.

[FR Doc. 92–1177 Filed 1–15–92; 8:45 am]

BILLING CODE 4310–22–M

[AZ–040–5410–10–A012]

Notice of Receipt of Application Number AZA 25950 for the Conveyance of Federally-Owned Mineral Interests; Safford District, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of receipt of conveyance of mineral interest application AZA 25950 in Cochise County.

SUMMARY: Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Lawrence E. Clark and Ruth D. Clark, husband and wife, have applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 24 S., R. 22 E.,
Sec. 9, NE¼SE¼.
Containing 40.00 acres, more or less.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interest, upon final rejection of the application or two years from the date of filing of the applications, October 1, 1991, whichever occurs first.

SUPPLEMENTARY INFORMATION: Additional information concerning this application may be obtained from the District Realty Specialist, Safford District Office, 425 E. 4th Street, Safford, Arizona 85546.

Dated: December 20, 1991.

Ray A. Brady,

District Manager.

[FR Doc. 92–1176 Filed 1–15–92; 8:45 am]

BILLING CODE 4310–32–M

[CO–050–4212–13]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, COC51326 exchange of private lands in Park County for public lands in Custer, Fremont and San Miguel Counties, Colorado.

SUMMARY: The following public land has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 USC 1716:

T.20S., R.72W., Sixth P.M.
Section 20: SE¼NE¼, NW¼SE¼, E½SE¼
Section 28: SW¼SW¼
T.21S., R.72W.
Section 3: NE¼SW¼ (less MS 67 & 68)
Section 5: Lot 2, SW¼NE¼, S½NW¼, E½SW¼, W½SE¼
Section 6: Lots 6, 7, S½NE¼
Section 7: Lots 1, 2
Section 8: N¼SE¼
Section 9: W½SW¼
Section 22: NW¼NE¼
T.21S., R.73W.
Section 15: S½SW¼
Section 22: N½NE¼
T.22S., R.71W.
Section 4: Lot 5, SW¼SW¼
Section 5: Lots 15, 16, 21 and 23

Section 6: Lot 13
Section 8: NE¼NE¼, NW¼NW¼
Section 9: Lots 4, 5 and 10
T.23S., R.70W.
Section 27: SW¼
Section 28: E½SE¼
Section 33: NE¼NE¼
T.24S., R.72W.
Section 8: S½SE¼
Section 9: SW¼SW¼
Section 17: NE¼, SE¼NW¼, NE¼SE¼
T. 43N., R.11W., N.M.P.M.
Section 23: SE¼NE¼, NW¼SE¼
Containing 2,110.88 acres.

In exchange for these lands, the United States will acquire the following private land from Shepard and Association:

T.15S., R.73., Sixth P.M.
Section 19: All
Section 20: SW¼NE¼, S½NW¼, SW¼
Section 29: N½NW¼
Section 30: Lots 1, 2, and 7
T.15S., R.74W.
Section 24: Lots 1, 2, 3, E½NE¼, NE¼SW¼, S½SW¼, N½SE¼
Section 25: Lots 1 thru 9, SE¼NE, SW¼NW¼, N½SE¼
(Excluding a 20 acre parcel conveyed by metes and bounds)
Containing 1,882.41 acres.

The purpose of the exchange is to obtain private land containing important riparian, wildlife, recreation and other public values, while disposing of scattered parcels of public land which are scattered, difficult to manage tracts without public access. The proposed exchange is consistent with the objectives of the land use plan for the affected lands.

Any differences in the appraised values of the offered and selected lands will be equalized through acreage adjustments or cash payment.

DATES: Interested parties may submit written comments to the Canon City District Manager on or before March 2, 1992.

ADDRESSES: Bureau of Land Management, Canon City District, P.O. Box 2200, Canon City, CO 81215–2200.

FOR FURTHER INFORMATION CONTACT: Stu Parker, (719) 275–0631.

SUPPLEMENTARY INFORMATION: The exchange will involve both the surface and subsurface estates and will be subject to valid existing rights on both the offered and selected lands. This notice segregates the public lands described above from entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, for 2 years from publication or until patent issues. Any adverse comments will be evaluated by the District Manager who may vacate, modify, or continue this realty action and issue a final determination.

Donnie R. Sparks,
District Manager.
[FR Doc. 92–1178 Filed 1–15–92; 8:45 am]
BILLING CODE 4310–JB–M

[WY–930–4214–10; WYW 123105]

Proposed Withdrawal and Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 5,417.43 acres of Federal surface and mineral estate, and 40.00 acres of Federal mineral estate in Big Horn County to protect important paleontological resource values that were recently discovered near Greybull, Wyoming. This notice closes the land for up to 2 years from surface entry and mining.

DATES: Comments on the proposed withdrawal must be received by April 15, 1992.

ADDRESSES: Comments should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 307–775–6115.

SUPPLEMENTARY INFORMATION: On January 6, 1992, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principle Meridian

T. 54 N., R. 91 W.,
Sec. 4, lots 1 and 2, S½NE¼, SE¼SW¼, SE¼;
Sec. 5, SE¼NE¼, SE¼SW¼, SE¼;
Sec. 7, lots 9, 10, and 13;
Sec. 8, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 9, lots 1–14;
Sec. 16, NE¼, SW¼;
Sec. 17, W½NE¼, SE¼NE¼, W½, SE¼;
Sec. 18, lots, 5–11;
Sec. 19, E½, NE¼NW¼;
Sec. 20, N½, N½SW¼, SW¼SW¼, E½SE¼;
Sec. 21, N½NW¼, SW¼NW¼, W½SE¼;
Sec. 29, E½NE¼, SW¼NE¼, W½, N½SE¼, SW¼SE¼;
Sec. 30, NE¼, NE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 31, lot 5;
Sec. 32, W½NE¼, NW¼, NE¼SW¼, W½SE¼.

The area described contains 5,457.43 acres in Big Horn County, Wyoming.

The land in the SE¼NE¼ of section 17 is private surface estate. Therefore, this withdrawal will only segregate the locatable mineral estate on this parcel of land.

The purpose of the withdrawal is to protect and preserve significant, fragile, world-class paleontological resources. This protection will allow completion of scientific research and recovery and provide information for the development of appropriate, long-term management of the resource.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Wyoming State Director of the Bureau of Land Management.

Notice is hereby given that a public meeting will be held in connection with the proposed withdrawal. A notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, rights-of-way, cooperative agreements, or discretionary land use authorizations of a temporary nature which do not significantly disturb the surface of the land or impair the existing values of area.

Dated: January 9, 1992.
Ray Brubaker,
State Director, Wyoming.
[FR Doc. 92–1158 Filed 1–15–92; 8:45 am]
BILLING CODE 4310–22–M

Fish and Wildlife Service

Notice of Availability of Draft Environmental Impact Statement for the Proposed Construction of a Lake at the Brushy Creek State Recreation Area, Webster County, IA

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (FWS) has prepared a Draft Environmental Impact Statement (DEIS), which is available for public review. The DEIS evaluates a proposal of the Iowa Department of Natural Resources to construct a 690-acre lake at the Brushy Creek State Recreation Area (BCSRA) in Webster County, Iowa, with funding provided through the Federal Aid in Sport Fish Restoration Act. The primary purposes of the proposed lake development are to provide a fishery resource in north-central Iowa and to meet water-oriented recreational needs of the area while maintaining environmental quality. Other alternatives considered in detail in the DEIS include the construction of a complex of three tributary lakes of 16, 17, and 55 acres, and the No Action alternative, which would upgrade existing facilities but would not involve construction of a lake(s). Public comment on the DEIS is solicited pursuant to National Environmental Policy Act regulations (40 CFR 1503.1). Public meetings will be convened as described below.

DATES: Written comments on the DEIS should be received at the address below by March 16, 1992. Public meetings will be held at the Holiday Inn located at 2001 Highway 169 South in Fort Dodge, Iowa, on Wednesday, February 19, 1992. The public meetings will be held at 2 p.m. and 7 p.m.

ADDRESSES: Written comments should be addressed to: Regional Director, North Central Region, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

FOR FURTHER INFORMATION CONTACT: Mr. David Pederson, Fisheries Biologist, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056—Telephone: (612) 725–3596. Individuals wishing copies of this DEIS for review should immediately contact Mr. Pederson. Copies have been sent to all agencies and organizations who participated in the scoping process and to all others who have already requested copies.

SUPPLEMENTARY INFORMATION: Mr. Robert Kriska is the primary author of this document. The FWS, Department of the Interior, has prepared a DEIS on the proposal to provide funding through the Federal Aid in Sport Fish Restoration Act to the Iowa Department of Natural Resources to construct a recreational lake at the BCSRA in north-central Iowa Near Fort Dodge, Iowa. The lake would have a surface area of 690 acres, a maximum depth of 75 feet, a mean depth of 29 feet, and 18 miles of shoreline. The BCSRA is a 4,200-acre state-owned recreation area located along Brushy Creek, which is a small tributary of the Des Moines River.

This action is designed to provide a fishery resource in north-central Iowa and to meet the water-oriented recreational needs of the area in a natural setting while maintaining environmental quality. The proposed lake will serve an 11-county area within a 50-mile driving distance of the BCSRA, with visitation anticipated from locations outside of this area. The need for more public recreational lakes in Iowa has been expressed in various surveys, including surveys conducted in 1968, 1985, and 1990. In addition, the Iowa State Comprehensive Outdoor Recreation Plan prepared in 1988 documented the need for recreational lakes in north-central Iowa compared to other areas of the state.

The DEIS documents a number of impacts associated with construction of a 690-acre lake (preferred alternative). Among the socio-economic impacts include disruptions to adjacent residents associated with increased traffic and influx of visitors; potential flooding of adjacent agricultural properties during maximum storm events, requiring acquisition of ponding easements; and, increased spending in the local area associated with lake construction and visitors. Major impacts to natural and scenic resources include inundation of approximately 6.2 miles of Brushy Creek, eliminating 74 percent of the Brushy Creek stream habitat; elimination of 31 percent of wooded habitat, 15 percent of mature upland forest, 54 percent of wetland habitat, and one acre of prairie habitat in the area; and, creation of 690 acres of lake-type habitat providing associated water-oriented recreational opportunities and scenic diversity in the area.

Impacts associated with the tributary lakes and No Action alternatives, both beneficial and adverse, would generally be less than with the preferred alternative. Impacts associated with the tributary lakes alternative would include a lesser degree of disruption of local residents based on the attraction of fewer visitors to the area; reduced potential for flooding adjacent agricultural lands, requiring fewer ponding easements; and, a reduced level of spending in the local area. It would also eliminate 6 percent of wooded areas, 8 percent of mature upland habitat, and 12 percent of wetland habitat in the area, as well as create a lesser degree of scenic diversity. The No Action alternative would essentially maintain the existing conditions in the area, with the exception of the development of minor recreational facilities over time.

Other governmental agencies and several members of the general public contributed to the planning and evaluation of the proposal and to the preparation of this DEIS. The Notice of Intent to prepare this DEIS was published in the February 13, 1990, **Federal Register**.

All agencies and individuals are urged to provide comments and suggestions for improving this DEIS by the comment deadline noted previously. All comments received by this date will be considered in preparation of the Final EIS for the proposed action.

The FWS has determined that this document does not contain a major proposal requiring preparation of an economic impact analysis under Executive Order 11821 as amended by Executive Order 11949 and OMB Circular A–107.

Dated: January 9, 1992.

James C. Gritman,

Regional Director.

[FR Doc. 92–1154 Filed 1–15–92; 8:45 am]

BILLING CODE 4310–55–M

Availability of the Draft Environmental Assessment for the Proposed Crane Meadows National Wildlife Refuge in Morrison County, MN

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (Service) will release a Draft Environmental Assessment (EA) for the proposed Crane Meadows National Wildlife Refuge located in the Rice and Skunk Lakes wetland complex of Morrison County, Minnesota. The EA evaluates four alternatives on the basis of their biological and socioeconomic impacts. The preferred alternative of the Service would establish a 13,540-acre national wildlife refuge composed predominantly of wetland habitat. Comments on the EA are solicited. This notice is being furnished as a supplemental to the National Environmental Policy Act Regulations (40 CFR 1501.7).

DATES: Comments on the EA will be accepted between January 15, 1992 and February 15, 1992. A public meeting will be held February 4, 1992, 7 to 10 p.m., Little Falls High School Commons, 1001

Southeast Fifth Avenue, Little Falls, Minnesota 56551.

ADDRESSES: Copies of the EA can be obtained from: Regional Director; U.S. Fish and Wildlife Service; Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056; Attention Don Hultman, Project Manager.

FOR FURTHER INFORMATION CONTACT: Don Hultman, Project Manager, U.S. Fish and Wildlife Service; Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056 (612) 725–3306.

Individuals wishing copies of this Draft EA for review should immediately contact the above individual. Copies have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies.

SUPPLEMENTARY INFORMATION: Don Hultman is the primary author of this document.

The Fish and Wildlife Service (Service), Department of the Interior, will release a Draft Environmental Assessment (EA) evaluating the biological and socioeconomic impacts of establishing the Crane Meadows National Wildlife Refuge (Refuge) in Morrison County, Minnesota. The study area encompasses the Rice and Skunk Lakes wetland complex, 5 miles southeast of Little Falls, Minnesota.

The primary purposes for the proposed Refuge are to protect, restore, and manage wetlands in support of the National Wetlands Priority Conservation Plan and the Prairie Pothole Joint Venture of the North American Waterfowl Management Plan; to enhance waterfowl and other migratory bird habitat; to protect habitat for threatened and endangered wildlife; to promote and preserve biodiversity; and to provide wildlife-oriented recreation and education.

The Service formulated a "no action" and three "action" alternatives that offer a variety of options designed to accommodate and respond to public and Service concerns collected during the scoping process. Any acquisition proposed as part of these alternatives would be consistent with the Service's policy of acquiring lands from willing sellers at appraised market value. These alternatives are summarized as follows.

Alternative 1: No Action—the Service would not establish a national wildlife refuge.

Alternative 2: The Service would acquire interest in 10,044 acres to create a refuge encompassing 10,740 acres.

Alternative 3: The Service would acquire interest in 12,845 acres to create a refuge encompassing 13,540 acres. This is the Service's Preferred Alternative.

Alternative 4: The Service would acquire interest in 15,621 acres to create a refuge encompassing 16,473 acres.

The environmental review of this project has been conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4371 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other applicable Federal regulations, and Service procedures for compliance with those regulations.

Copies of the Final Environmental Assessment will be available to the public 30 to 60 days following the conclusion of the comment period.

Dated: January 10, 1992.

James Gritman,

Regional Director.

[FR Doc. 92–1153 Filed 1–15–92; 8:45 am]

BILLING CODE 4310–55–M

[Case Number N–54955]

Notice of Intent (Notice) To Prepare an Environmental Impact Statement on the Proposed Mineral Withdrawal at Desert National Wildlife Range (Range), Lincoln and Clark Counties, Nevada, and To Hold Public Meetings To Receive Comments on the Proposed Mineral Withdrawal

AGENCY: U.S. Fish and Wildlife Service (lead agency), U.S. Bureau of Land Management, and U.S. Air Force (cooperating agencies).

ACTION: Notice of intent.

SUMMARY: This Notice advises the public that the U.S. Fish and Wildlife Service (Service), Bureau of Land Management (Bureau), and U.S. Air Force (Air Force) intend to gather information necessary for the preparation of an Environmental Impact Statement (EIS) on the proposed mineral withdrawal at Desert National Wildlife Range. In addition, a proposed withdrawal of more than 5,000 acres requires a public meeting to receive comments on the proposal. This Notice is being furnished pursuant to the Council on Environmental Quality Regulations for Implementing National Environmental Policy Act's (NEPA) Regulations (40 CFR 1508.22.

SCOPING INFORMATION: Two public meetings will be held by the Service to identify issues and take comments related to the proposed withdrawal. These meetings will be held in Las Vegas and Alamo, Nevada, at the times and locations noted below. The scoping period will begin on February 1, 1992, and end on March 15, 1992. Interested agencies, organizations, and individuals are encouraged to provide written comments to the Service during the scoping period.

SCHEDULE OF PUBLIC SCOPING MEETINGS: February 25, 1992, 7 p.m. to 9 p.m., Clark County Commission Meeting Room, 225 Bridger Avenue, Las Vegas, Nevada and February 27, 1992, 7 p.m. to 9 p.m., Lincoln County Annex, Alamo, Nevada.

FOR FURTHER INFORMATION CONTACT: Mark Strong, EIS Team Leader, Desert National Wildlife Range Mineral Withdrawal, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 Northeast 11th Avenue, Portland, Oregon 97232–4181, (503) 231–2235.

WRITTEN COMMENTS INFORMATION: Written comments must be received by March 15, 1992. Address written comments to Mark Strong, EIS Team Leader, at the above address.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service proposes to withdraw approximately 740,000 acres of the Desert National Wildlife Range from mining entry for a period of 20 years to protect the biological integrity of the Range. The remainder of the Range is overlapped by the Nellis Bombing and Gunnery Range withdrawal, and is closed to mining under Public Law 99–606. A notice of the proposed withdrawal was published in the **Federal Register** (Vol. 56, No. 202, p. 52283) on October 18, 1991. That notice closed the Range from mining for up to 2 years. The Range will remain open to applications under the mineral leasing laws.

The Range was established in 1936 by Executive Order of President Franklin D. Roosevelt. A wilderness proposal for 80 percent of the Range was sent to Congress for consideration in May 1974, but has not been acted upon. The Range was established for the protection, enhancement, and maintenance of wildlife, especially the desert bighorn sheep and its habitat. Other objectives of the Range are to protect the desert tortoise (a Federally listed threatened species) and to protect an outstanding example of a diverse desert ecosystem.

All interested parties are urged to provide written comments regarding the scope of the EIS, alternatives to be developed, and potentially significant environmental impacts which may occur from implementation of the withdrawal or any alternatives. Comments are due by March 15, 1992.

The environmental review of this project will be conducted in accordance with the requirements of NEPA (42 U.S.C. et seq.), Council for Environmental Quality Regulations for

Implementing NEPA (40 CFR 1500, et seq.), other appropriate Federal regulations, and Service, Bureau, and Air Force policies for compliance with those regulations.

Dated: December 26, 1991.

William F. Shake,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 91-1175 Filed 1-15-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Civil War Sites Advisory Commission; Meetings

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the Civil War Sites Advisory Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), that a meeting of the Civil War Sites Advisory Commission will be held on February 1, 1992, and on February 3, 1992, at the Holiday Inn, Crown Plaza in Nashville, TN.

The February 1 meeting (Saturday) will begin at 1 p.m. and conclude not later than 6 p.m. The February 3 meeting (Monday) will begin at 9 a.m. and conclude not later than 2 p.m.

This meeting constitutes the fifth meeting of the Commission. On Saturday, the Commissioners will discuss the progress of the Commission Study and other Commission business and will welcome input from members of the public regarding issues related to the preservation and protection of Civil War sites. The Monday meeting will focus primarily on discussion of specialized subjects as they relate to preserving and protecting Civil War sites.

Space and facilities to accommodate members of the public may be limited and persons will be accommodated on a first-come, first-served basis, Anyone may file with the Commission a written statement concerning matters to be discussed.

Persons wishing further information concerning the meeting, such as the specific location of the meeting, or who wish to submit written statements, may contact Ms. Jan Townsend, Interagency Resources Division, P.O. Box 37127, Washington, DC 20013-7127 (telephone 202-343-9549) or Mr. Herbert L. Harper, Executive Director, Tennessee Historical Commission, 701 Broadway, Nashville, TN 37243-0442 (telephone 615-742-6716). Draft summary minutes of the meeting will available for public inspection about 8 weeks after the meeting, in room 6111, 1100 L Street, NW., Washington, DC.

Dated: January 10, 1992.

Lawrence E. Aten,

Acting Executive Director and Chief, Interagency Resources Division.

[FR Doc. 92-1206 Filed 1-15-92; 8:45 am]

BILLING CODE 4310-70-M

Delaware Water Gap National Recreation Area

AGENCY: National Park Service; Delaware Water Gap National Recreation Area Citizens Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date for the next meeting of the Delaware Water Gap National Recreation Area Citizens Advisory Commission. Notice of said meeting is required under the Federal Advisory Committee Act.

DATES: February 15, 1992.

TIME: 9 a.m.

LOCATION: Pinchot Institute for Conservation (Grey Towers) Milford, PA.

AGENDA: The agenda will be devoted to committee reports, Superintendent's report, old business, new business, correspondence, identification of topics of concern. Opportunities for public comment to the Commission will be provided.

FOR FURTHER INFORMATION CONTACT: Richard G. Ring, Superintendent; Delaware Water Gap National Recreation Area, Bushkill, PA 18324; 717-588-2435.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizens Advisory Commission was established by Public Law 100-573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the Recreation Area and its surrounding communities.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to The Delaware Water Gap National Recreation Area Citizens Advisory Commission, P.O. Box 284, Bushkill, PA 18324. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Delaware Water Gap National Recreation Area located on River Road 1 mile east of U.S. Route 209, Bushkill, Pennsylvania.

Charles P. Clapper Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 92-1207 Filed 1-15-92; 8:45 am]

BILLING CODE 4310-70-M

Address for Farmington River Study Committee Meeting To Be Held at Canton Town Hall, Canton, Connecticut: Correction

AGENCY: National Park Service.

ACTION: Notice of correction of meeting site.

SUMMARY: This Notice corrects the address previously published in the **Federal Register** on December 24, 1991, (56 FR 66641) for the meeting of the Farmington River Study Committee. The correct address for the meeting is the Canton Town Hall, 3rd Floor Meeting Room, Canton, Connecticut. The date and time remain unchanged: Thursday, February 13, 1992, 7:30 p.m.

Dated: January 9, 1992

Robert W. McIntosh,

Acting Regional Director.

[FR Doc. 92-1208 Filed 1-15-92; 8:45 am]

BILLING CODE 4310-70-M

Steering Committee for the "Protecting Our National Parks" Symposium; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Steering Committee Meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), that a meeting of the Steering Committee for the "Protecting Our National Parks" Symposium (now also commonly entitled, "Our National Parks: Challenges and Strategies for the 21st Century") will be held at 1 p.m. on Tuesday, February 4, 1992 in Cambridge Massachusetts, concluding no later than 5 p.m. The meeting will occur at Harvard University's John F. Kennedy School of Government, Malcolm Weiner Auditorium/The Taubman Center, 79 John F. Kennedy Street, Cambridge, MA 02138. The Kennedy School of Government is located in Harvard Square and easily accessible by public transportation.

By notice in the **Federal Register** of January 3, 1991, the Symposium Steering

Committee was established as an advisory committee to advise the Director of the National Park Service. Acting under its charter, the Steering Committee has planned and conducted the symposium, which was a cooperative undertaking among the National Park Service and several other entities to focus on National Park System issues and opportunities for improved park stewardship. Further background information may be obtained from notices published in the **Federal Register** of September 19, 1991 and November 20, 1991.

As is indicated in the referenced notices, the Steering Committee established four "Working Groups" to assemble information and preliminary recommendations on specific issues and to preside over discussion of the issues at the symposium, which was held in Vail, Colorado, October 7–10, 1991. The Closing General Session of the Symposium was opened to public participation, to allow public comment on the Working Group recommendations as they existed at that time. Based on the symposium discussion, the four Working Groups then completed final recommendations to the Steering Committee. The final Working Group recommendations were made available for public review by interested parties, during a comment period which ended December 13, 1991. On December 17, 1991 the Steering Committee convened in Washington, DC to review the final Working Group recommendations and the written public comments, and to receive further oral comment from interested parties.

Based on the above inputs and meetings, draft Committee recommendations to the National Park Service Director are being prepared. The purpose of the February 4 meeting is to review the draft recommendations, discuss and modify them as the Committee sees fit, and formally adopt the final recommendations that will comprise the Committee's report to the Director.

The February 4 meeting will be held in conformance with the provisions of the Federal Advisory Committee Act, including an opportunity for public comment as the final recommendations are formulated. The Steering Committee Chairman may, however, restrict the length of public comments as necessary to complete the Committee's agenda no later than 5 p.m. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis.

Persons wishing further information on the meeting may contact the Steering Committee Chairman, Mr. William J. Briggle, Pacific Northwest Regional Office, National Park Service, 83 South King Street, suite 212, Seattle, Washington 98104 (telephone 206–553–4653).

Herbert S. Cables, Jr.,

Deputy Director.

[FR Doc. 92–1209 Filed 1–15–92; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–313]

Tuna: Current Issues Affecting the U.S. Industry

AGENCY: United States International Trade Commission.

ACTION: Time and place on public hearing.

SUMMARY: Notice is hereby given that the public hearing in connection with this investigation will be held at the Sheraton Los Angeles Harbor, 601 South Palos Verdes Street, San Pedro, California 90731–3329, beginning at 9:30 a.m. (Pacific Standard Time) on Tuesday, February 4, 1992. The hearing will be continued on Wednesday, February 5, 1992, if necessary. Notice of the investigation and hearing was published in the **Federal Register** of September 18, 1991 (56 FR 47226). All persons will have the right to appear by counsel or in person, to present testimony, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E St. SW., Washington, DC, 20436, no later than noon (Eastern Standard Time), January 23, 1992. Persons testifying at the hearing are encouraged to file prehearing briefs or statements; the deadline for filing such briefs or statements (a signed original and 14 copies) is January 27, 1992; and the deadline for filing posthearing briefs or statements is April 15, 1992. Any confidential business information included in such briefs or statements or to be submitted at the hearing must be submitted in accordance with the procedures set forth in § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

Hearing-impaired persons are advised that information on this investigation can be obtained by contacting the Commission's TDD terminal on 202–205–2648.

By order of the Commission.

Issued: January 9, 1992.

Kenneth R. Mason,

Secretary

[FR Doc. 92–1110 Filed 1–15–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–347 (Sub-No. 1X)]

Florida West Coast Railroad Co.—Abandonment Exemption—Gilchrist and Levy Counties, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts Florida West Coast Railroad Company from the prior approval requirements of 49 U.S.C. 10903–10904 to abandon its 9.9-mile rail line between milepost 806.5 at Wilcox and milepost 816.4 at Chiefland, in Gilchrist and Levy Counties, FL, subject to environmental, historic preservation, and standard labor 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 February 15, 1992. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by January 27, 1992, petitions to stay must be filed by January 31, 1992, and petitions for reopening must be filed by February 10, 1992. Requests for a public use condition must be filed by January 10, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB–347 (Sub-No. 1X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: John D. Heffner, Gerst, Heffner, Carpenter & Podgorsky, Suite 1107, 1700 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660 (TDD for hearing impaired: (202) 927–5721).

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

[1] *See Exempt. of Rail Line Abaondment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

hearing impaired is available through TDD services (202) 927–5721).

Decided: January 6, 1992.

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

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–1150 Filed 1–15–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–361 (Sub–No. 1X)]

Michigan Shore Railroad, Inc.; Abandonment Exemption in Muskegon County, MI

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 1.12-mile line of railroad between mileposts 94.8 and 95.92, in the City of Muskegon, Muskegon County, MI.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 15, 1992 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 27, 1992.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by February 5, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Michael W. Blaszak, Belnap, Spencer, McFarland and Herman, 225 West Washington Street, Fourth Floor, Chicago, IL 60606.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 21, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or train use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 7, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–1041 Filed 1–15–92; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on September 12, 1991, Hoffmann-La Roche Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Levorphanol (9220)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–1140 Filed 1–15–92; 8:45 am]

BILLING CODE 4410–09–M

LEGAL SERVICES CORPORATION

Grant Award for Legal Service State Support Centers in the States of Delaware, Iowa, Kansas, Nebraska, and South Dakota

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to award grants.

SUMMARY: The Legal Services Corporation hereby announces its intention to award a one-time, non-recurring grant to provide substantive and training support to legal service programs in the states of Delaware, Iowa, Kansas, Nebraska, and South Dakota. The Corporation plans to award grants totalling $357,143 to the basic field program with the largest poverty population in each said state. Accordingly, the following grants will be made:

Community Legal Aid Society, Inc.	DE....	$71,428.60
Legal Services Corporation of Iowa.	IA.....	71,428.60
Kansas Legal Services Inc.	KS....	71,428.60

Legal Aid Society, Inc.....	NE....	71,428.60
East River Legal Services ..	SD....	71,428.60

These one-time grants will be awarded pursuant to authority conferred by section 1006(a)(3) of the Legal Services Corporation Act of 1974, (Act) as amended. This public notice is issued pursuant to section 1007(f) of this Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

DATES: All comments and recommendations must be received on or before the close of business on February 13, 1992, at the Office of Field Services, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Manager, Grants and Budgets Division, Office of Field Services, (202) 863–1837.

Dated: January 10, 1992.

Charles T. Moses,

Deputy Director, Office of Field Services.

[FR Doc. 92–1152 Filed 1–15–92; 8:45 am]

BILLING CODE 7050–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–39 and DPR–48 issued to Commonwealth Edison Company (the licensee) for operation of the Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

The proposed amendment would change the Technical Specifications Definitions section to address the planned upgrade of the Process Protection System from the current Westinghouse 7100 series analog system to the Westinghouse EAGLE–21 digital system.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The EAGLE–21 process protection system is designed to mitigate anticipated operational occurrences and design basis events by actuating reactor trip and engineered safeguards signals credited in safety analyses. EAGLE–21 is designed to monitor and process signals for temperature, pressure, fluid flow and fluid level. EAGLE–21 is a form, fit and functional replacement for the Westinghouse 7100 series process protection system. A failure of the EAGLE–21 system will not produce any results or cause any accidents that would not have been produced by a failure of the existing system. Although there are new failure modes which could result in failure of an EAGLE–21 rack, EAGLE–21 system reliability/availability evaluations have concluded that overall EAGLE–21 system availability is better than the present analog process protection system equipment availability. In addition, the consequences of a failure of an EAGLE–21 rack are bounded by the consequences of a loss of a vital instrument bus (existing Zion licensing basis). Measures have also been taken to ensure EAGLE–21 will perform as required to mitigate consequences of accidents. Therefore, this change, reflecting installation of EAGLE–21, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The EAGLE–21 process protection system is designed to mitigate anticipated operational occurrences and design basis events by actuating reactor trip or engineered safeguards signals credited in the safety analyses. EAGLE–21 is designed to monitor and process signals for temperature, pressure, fluid flow and fluid levels. EAGLE–21 is form, fit and functional replacement for the Westinghouse 7100 process protection system. A failure of the EAGLE–21 system will not produce any results or cause any accidents that would not have been produced by a failure of the existing system. The EAGLE–21 system has been designed and independently verified and validated to be in compliance with the protection system functional requirements. Additionally, it has been determined that the EAGLE–21 system susceptibility to common mode failure mechanisms is reduced based on an evaluation of the performance standards supported by the system reliability study, design, verification and validation, and equipment qualification programs. Thus, this change reflecting installation of EAGLE–21, does not create the possibility of a new or different kind of accident from any accident previously evaluated for the Zion Nuclear Generating Station.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change, reflecting the EAGLE–21 installation, will not reduce a margin of safety. The accuracy of the Zion process protection system is improved with the installation of the EAGLE–21 equipment. Consequently, some additional margin can be made available between the safety analysis limit and the trip setpoint. Setpoints have been selected to ensure the reactor core and reactor coolant system are prevented from exceeding their Safety Limits during normal operation, anticipated operational occurrences, and design basis events, and to ensure that the engineered safeguards systems necessary for accident mitigation are actuated. The various reactor trip and engineered safeguard actuation circuits continue to provide signals to automatically open the reactor trip breakers or actuate engineered safeguards equipment, as applicable, whenever a condition monitored by the RPS or ESAS reaches a preset or calculated level. In addition to redundant channels and trains, the EAGLE–21 protection system will continue to provide an RPS and ESAS which monitors numerous system variables, thereby providing protection system functional diversity. This conclusion is also based on the assumption that the overall response times remain bounding such that the results and conclusions of the accident analyses remain valid. Response time testing will assure the overall response times assumed in the accident analyses are not exceeded.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. The staff has not yet evaluated the licensee's assertion of enhanced overall reliability for the EAGLE–21 system. Nevertheless, based on previous application of the system, the staff concludes that the probability of previously evaluated accidents will not be significantly increased. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be

considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Service, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 18, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board Panel will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitled the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard J. Barrett: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First

National Plaza, Chicago, Illinois 60690, attorney for the license.

Nontimely filings of petitions for leave to intervene, amended petitions supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board Panel that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 26, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 10th day of January, 1992.

For the Nuclear Regulatory Commission.

John B. Hickman,

Project Manager, Project Directorate III–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–1186 Filed 1–15–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30171; File No. SR–NYSE–91–41]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Increase in the New York Stock Exchange's Continuing Listing Fees

January 8, 1992.

On November 20, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase continuing listing fees.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 30017 (December 2, 1991), 56 FR 64282 (December 9, 1991). No comments were received on the proposal.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] A complete list of the NYSE's fees applicable to the listing process is contained in the NYSE Listed Company Manual.

Currently, the Exchange's listing fees include an original listing fee, an initial fee, and continuing annual listing fees.

The NYSE proposes to institute a rate increase with respect to continuing listing fees as follows: [4]

CONTINUING FEES FOR DOMESTIC AND FOREIGN SECURITIES [5]

	Current	Proposed
Per Share/ADR Fee: [6]		
0–2,000,000	$1,500	$1,600
Over 2,000,000	750	805
Minimum Fees:		
1–10,000,000	14,630	15,700
10,000,001–20,000,000.	21,950	23,550
20,000,001–50,000,000.	29,260	31,400
50,000,001–100,000,000.	43,780	47,000
100,000,001–200,000,000.	58,400	62,700
Over 200,000,000.	72,800	78,100
Maximum	500,000	No change.
Continuing Fees for Short-Term Securities [7]		
Securities Issued: [8]		
1–10,000,000	$7,315	$7,850
10,000,001–20,000,000.	10,975	11,775
20,000,001–50,000,000.	14,630	15,700
50,000,001–100,000,000.	21,890	23,500
100,000,001–200,000,000.	29,200	31,350
Over 200,000,000.	36,400	39,050

[5] The Continuing Annual Listing Fee is payable each year on each equity security listed on the Exchange. The applicable fee is the greater of the Per Share/ADR Fee or the minimum fee.

[6] Rate is per million shares or American Depositary Receipts ("ADRs").

[7] Short term securities are defined by the Exchange as those securities having a term of less than five year (*e.g.*, index warrants, foreign currency warrants, contingent value rights).

[8] This fee depends on the number of securities issued, as opposed to outstanding. *See also* letter from Ricki Spinner, Financial Planning and Analysis, NYSE, to Edith Hallahan, Branch of Exchange Regulation, Commission, dated November 25, 1991, amending the title of this fee from "Range Minimums" to "Securities Issued."

The NYSE states that the purpose of the proposed increase to continuing listing fees is to offset in part the increased costs of supplying services provided by the Exchange. These costs include manpower, automation, utilities and other costs associated with providing marketplace facilities and services.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6.[9] In particular, the Commission believes the proposal is consistent with the section 6(b)(4) requirement that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using the Exchange's facilities.[10] The Commission believes that the proposed increases in continuing listing fees are equitable because the increases should not result in an excessive allocation of NYSE fees on its issuers as opposed to members and other persons using its facilities. The Commission further finds that the fees are reasonable because the Exchange is proposing the increases to offset rising costs. Accordingly, the Commission believes that it is appropriate to approve the proposed rule change.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, [11] that the proposed rule change (SR–NYSE–91–41) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–1132 Filed 1–15–92; 8:45 am]

BILLING CODE 8010–01–M

[4] The NYSE submitted the amendments to the schedule of continuing listing fees as Exhibit II to the rule filing. *See also* NYSE Listed Company Manual 902.02.

[9] 15 U.S.C. 78f (1988).

[10] 15 U.S.C. 78f(b)(4) (1988).

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1991).

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1551]

Determination Under Section 212 (f) of the Immigration and Nationality Act of 1952, as Amended

I hereby make the determination provided for in section 3 of Presidential Proclamation No. 5829, that democracy has been restored in Panama, so that the restrictions imposed in said proclamation, pursuant to section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f)), shall lapse.

This determination shall be reported to the Congress and published in the **Federal Register.**

Dated: December 17, 1991.

Lawrence S. Eagleburger,

Acting Office of the Secretary.

[FR Doc. 92-1180 Filed 1-15-92; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended January 3, 1992

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: 47933.
Date filed: December 30, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/P 1159 dated November 11, 1991; Middle East-Africa Resolutions; R-1 to R-17.
Proposed Effective Date: April 1, 1992.

Docket Number: 47934.
Date filed: December 30, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/P 1127 dated September 30, 1991; Within Africa Resolutions; R-1 to R-23.
Proposed Effective Date: April 1, 1992.

Docket Number: 47935.
Date filed: December 30, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/P 1168 dated November 29, 1991; Within Middle East Resolutions; R-1 to R-7.
Proposed Effective Date: April 1, 1992.

Docket Number: 47936.
Date filed: December 30, 1991.
Parties: Members of the International Air Transport Association.
Subject: PSC/Reso/062 dated December 13, 1991; Addendum to Finally Adopted Resolutions; R-1 to R-2.
Proposed Effective Date: December 1, 1992.

Phyllis T. Kaylor,

Chief, Documentary Services Divisions.

[FR Doc. 92-1139 Filed 1-15-92; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 91-010]

Oil Pollution Act of 1990; Appointment of Area Committee Members and Designation of Area Committee Responsibilities

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard is providing notice of the development of policy regarding the appointment of members to Area Committees in the coastal zones. It is also providing notice of the responsibilities of the Area Committees to conduct local contingency planning under the Oil Pollution Act of 1990 (OPA 90). This notice solicits comments from the public regarding the establishment of Area Committees under the direction of Coast Guard predesignated Federal On-Scene Coordinators (OSCs), appointment of members, and implementation of pollution response planning responsibilities. The Coast Guard hopes for early participation by the public in order to expedite the creation of these policies.

The Coast Guard and EPA are refining response policies designed to minimize the harm caused by discharges of oil or releases of hazardous substances in the most cost-effective manner. These policies will be published as part of the revised National Contingency Plan (NCP) (40 CFR part 300), currently being developed.

DATES: Comments must be received on or before February 18, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 91-010), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this policy development. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Gauvin, Project Manager, Oil Pollution Act Staff, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-6226.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in the early stages of this policy development by submitting written views, data, or arguments. Persons submitting comments should include their name and address, identify this specific notice (CGD 91-010) and the specific section of the action being addressed or the issue to which the comment applies, and give a reason for the comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before the final policy is drafted and published. Late submittals will be considered to the extent practicable without delaying the publication of the final policy.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." Requests should indicate why a public hearing is considered necessary. If the Coast Guard determines that the opportunity for oral presentations will aid this policy development, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Discussion

The Oil Pollution Act of 1990 (Pub. L. 101-380) (OPA 90) was enacted to reduce oil spills and to improve the nation's preparedness and ability to respond to them. OPA 90 creates a comprehensive prevention, response, liability, and compensation regime for dealing with vessel and facility generated discharges of oil or hazardous substances. The Coast Guard's initial efforts in establishing the policy for Area Committees and Area Contingency Plans are limited to their responsibility to respond to oil discharges, even though the NCP and Area Contingency Plans are to address hazardous substance releases, as well as oil. Area Committees will be designated by the Environmental Protection Agency for the inland zones in a separate notice; however, the Coast Guard and EPA intend that Area Committee responsibilities will be consistent in both coastal and inland zones.

Subtitle (B) of title IV of OPA 90 amends section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) (FWPCA) and contains certain stand alone provisions requiring enhanced response systems to clean up discharges of oil or hazardous substances. In particular, section 4202(a)(6) of OPA 90 amends section 311(j)(4) of the FWPCA, by establishing Area Committees and by authorizing the President to appoint the committees' members from qualified personnel of Federal, State, and local agencies. Section 4202(a)(6) also requires the Area Committees to prepare and submit for approval an Area Contingency Plan for its area. The amended section 311(j)(4)(C) FWPCA states that "the Area Contingency Plan shall—(i). when implemented in conjunction with the National Contingency Plan, be adequate to remove a worst case discharge, and to

mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area." Each Area Committee is to submit an Area Contingency Plan for review and approval, under the OSC's direction, to the President no later than 18 months after the enactment of OPA 90.

Executive Order (E.O.) 12777 of 18 October 1991, delegates the President's many responsibilities under OPA 90 to appropriate executive agencies. Under E.O. 12777, the authority of the President to appoint Area Committee members and to review and approve Area Contingency Plans for the "coastal zone" is delegated to the Secretary of Transportation. The Coast Guard anticipates that the Secretary will delegate these specific authorities to the Commandant of the Coast Guard.

The Commandant of the Coast Guard intends to delegate to each Captain of the Port (COTP), as OSC, the authority to appoint members of the Area Committee. Under the direction and guidance of the OSC, the Area Contingency Plan shall be prepared by the Area Committee. The appropriate Coast Guard District Commander shall review the Area Contingency Plan, and require amending when necessary. The Commandant intends to delegate to the appropriate Coast Guard District Commander the authority to approve Area Contingency Plans for the coastal zone.

The term "coastal zone," is defined in the current NCP (40 CFR 300.5), to mean all United States waters subject to the tide, United States waters of the Great Lakes, specified ports and harbors on inland rivers, and the waters of the Exclusive Economic Zone (EEZ).

The Area Committee will replace the Emergency Task Forces currently required under section 311(c)(2)(C) of the FWPCA and the "Multi-Agency Local Response Teams" (MALRTs) which currently exist in several ports.

The "areas" for the Coast Guard Area Committees are expected to be the COTP zones as defined in 33 CFR part 3, and further limited to the "coastal zone" as defined in the NCP. A Coast Guard Notice of Intent (56 FR 33481), published on 22 July 1991 notified the public of the intended boundaries for the coastal Area Committees and noted the designation of the Coast Guard COTPs as OSCs for the coastal zones pursuant to the NCP.

I. Appointment of Committee Members

Currently, Coast Guard OSCs have an ad hoc "network" of local people who are concerned with and on occasion respond during an oil discharge incident. Congress recognized the value of this current system but further saw the need for committees composed of government representation at all levels, with definitive responsibilities for the area's environmental integrity. OPA 90 formalizes this concept of a "network" of local support within the areas and provides for a more active role for Federal, State, and local government agencies in developing the response contingency plans required for their respective area.

Additionally, local involvement will facilitate the development of a thoroughly comprehensive response contingency plan, allowing the concerns of local agencies and port users to be addressed. The Area Committee will provide a meaningful forum for open discussions, maximizing information exchange and improving area wide response philosophies and priorities. The Area Committee is intended to foster a cooperative professional environment, focused on avoiding duplicate response organizations and minimizing "second guessing" of the OSC's actions by effective communication and commitment to response protocols in advance of an incident.

The COTP, in his role as OSC, will chair the Area Committee, with the cognizant COTP contingency planner serving as vice-chair. The Scientific Support Coordinator (SSC), a National Strike Force (NSF) representative, and members of the District Response Advisory Team (DRAT) will also assist the Area Committee as consultants.

To implement section 311(j)(4) of the FWPCA as amended by OPA 90, the Area Committee membership will be appointed by the OSC from appropriate Federal, State, and local agencies of the coastal area. Federal agency members to the Area Committee will be selected from the 15 agencies which make up the National Response Team (NRT). Not all NRT members need to be represented on each Area Committee. For example, the Nuclear Regulatory Commission, Department of Justice and Department of State have little or no role in oil spill response.

Under the NCP, State Governors are requested to designate a State agency as a single point of contact for pollution preparedness and response. This designated agency will be the primary State representative on the Area Committee. Other State agencies will be considered for membership by the OSC, particularly if nominated by the designated primary State agency. The agencies appointed to the Area Committee from local counties, cities and towns, should be appointed from among those agencies responsible for coordination of environmental issues and emergency response in the coastal zone.

Whenever possible, agencies having similar or related interests will be encouraged to agree on representation by a single agency. For instance, the primary State agency may represent the views of several other State agencies. State agencies may represent corresponding local interests or vice versa, or a Federal agency may have only minimal interest in the coastal area. Input from these non-member agencies, and the public, private and industry sectors is encouraged and should be channeled through any member on various workgroups formed for that express purpose.

Area Committee membership is limited to government officials. The Area Committee is not precluded from soliciting advice, guidance, or expertise from all appropriate sources. The Coast Guard believes these other sources should include a broad spectrum of representatives from the community, facility owners/operators, shipping company representatives, cleanup contractors, emergency response officials, pilots associations, academia, environmental groups/specialists/consultants, response organizations and concerned citizens.

In order to obtain the maximum input from the Area Committee membership, members of the Area Committee should be capable of and responsible for making decisions regarding their agency policies. The Area Committee should act as the focal point to solicit comments and advice on the concerns and responsibilities of the coastal area's public and industry. The Area Committee members can then incorporate this information into the Area Contingency Plan to ensure that local environmental, social, ecological, and economic concerns of the port area are addressed.

Area Committees may establish specific interest or issue related subcommittees, at the OSC's direction. These might include subcommittees for: communication systems, sensitive environmental areas, response strategies (mechanical vs. chemical or biological), recovered waste storage and disposal, exercise participation, navigational safety, fish and wildlife rescue, etc. These subcommittees will be chaired by an Area Committee member and in most cases be staffed by non-members invited to participate in work groups of these subcommittees based on their interest and expertise.

Committee members are advised that the Area Committee does not constitute a formal Federal Advisory Committee and that each agency is responsible for funding its own participation in committee proceedings.

II. Committee Responsibilities

The Area Committee is a preparedness and planning committee although some of its members may be involved in response activities. The Area Committee's main purpose is to plan for response within the geographic boundaries of the designated area. The OSC will direct and assist the Area Committee in the development of a comprehensive Area Contingency Plan that meets, to the maximum extent practicable, the requirements established by OPA 90. The Area Committee should address and satisfy as many concerns raised by the committee members and appropriate outside groups as possible.

The Area Committee will coordinate and cooperate with Federal, State, and local officials to enhance contingency planning with all appropriate non-member agencies and groups inside the designated area. The following are some of the factors which must be considered when planning joint response actions: appropriate procedures for mechanical recovery; use of chemical treating agents; shoreline impact evaluation and cleanup; protection of sensitive environmental areas; and protection, rescue, and rehabilitation of fisheries and wildlife. All of these actions must be addressed in advance of a spill to ensure there is no delay to the response due to poor local coordination.

The Area Committee does not replace the Regional Response Team (RRT) or its responsibilities to make policy decisions regarding the use of dispersants, bioremediation, in-situ burning, or make disposal decisions. Generally, such policy decisions must come from the RRT, and the Area Committee must work the OSC in implementing those RRT policies which impact response preparedness and planning within the area.

The Area Committee has no formal role during an actual response. During response, the OSC and some of the Area Committee members will be involved in coordinating the response. Thus it is envisioned that the Area Committee would not meet as a formal response support group. However, the vice-chair of the Area Committee (COTP contingency planner) will be the Point of Contact for the Area Committee during a response. The Point of Contact will coordinate information flow, advice, and response input from those Area Committee members not specifically involved in the response effort. In this way, information from Area Committee members not involved will be effectively channeled through the Point of Contact to the OSC, thus ensuring prompt consideration of their input. This procedure allows the Area Committee members concerns or advice to reach the OSC during a response, while not overburdening the OSC's capability to coordinate the response.

The Area Committee should develop the Area Contingency Plan to conform to the policies of the NCP, as required by 40 CFR 300.210 and OPA 90. Area Committee strategies should address various types of possible oil discharge incidents, in varying conditions of weather, sea state, and seasonal aspects. To accomplish the above, the Area Contingency Plan should:

*Describe and address a "worst case" discharge, and measures to mitigate or prevent a substantial threat of such a discharge from a vessel, offshore facility, or onshore facility operating in or near the area;

*Describe the area covered by the plan, including the areas of special economic, recreational, political, or environmental importance, that might be damaged by a discharge.

*Describe in detail the responsibilities of the Federal, State, and local agencies in preparedness, planning, and in responding to a discharge, or substantial threat of a discharge;

*Describe in detail the responsibilities of an owner or operator of a facility or vessel in removing a discharge, and in mitigating or preventing a substantial threat of a discharge.

*List the response equipment (including fire fighting equipment), dispersants, or other mitigating substances and devices, and the personnel available to an owner or operator, and Federal, State, and local agencies, to ensure an effective and immediate removal of a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge.

*Describe the procedures to be followed for obtaining an expedited decision regarding the use of dispersants or other chemical treating agents.

*Describe in detail how the Area Contingency Plan is integrated into other Area Contingency Plans and vessel, offshore facility, and onshore facility response plans, approved under this subsection, and into procedures of the National Strike Force Coordination Center.

Each Area Contingency Plan must address the topics clearly and concisely so that is no confusion as to who is responsible for what. Aggressive proactive efforts must be made to ensure preplanned response strategies are in place so immediate and effective cleanup of oil discharge take place in the coastal zone.

These are not the only requirements generated by OPA 90 mandates that will effect the development of the Area Contingency Plan. A study of the format and the approval process for Area Contingency Plans is ongoing to ensure that all oil spill response planning is coordinated within the NRS. The Coast Guard intends to publish a separate Notice in the **Federal Register** on Area Contingency Plan formats and the approval process once these studies are complete.

Questions

To adequately address these and other issues, public comments are needed. Responses to the following questions would be particularly useful in developing the Coast Guard's policy concerning the appointment of Area Committee Members and designation of Area Committee responsibilities.

1. Is it a reasonable to assume that a limitation of the number of members on the Area Committee will allow it to be manageable and efficient? If it is not, suggest how this could be accomplished?

2. Will the appointment of members by the OSC from Federal, State, and local agencies be adequate to complete contingency planning responsibilities?

3. Are there sufficient provisions for participation in the Area Committee by members of the port community, both public and private? If not, suggest how this can be accomplished?

4. Are there planning or response actions, not mentioned in this notice, that should be completed by the Area Committee as part of their responsibilities?

Comments are not limited to the above and are invited on any aspect of implementing the Coast Guard policy which will be later published as part of the NCP.

Dated: January 10, 1992.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection

[FR Doc. 92–1193 Filed 1–15–92; 8:45 am]

BILLING CODE 4910–14–M

[CGD 91–003]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. app. I), notice hereby is given of a meeting of the National Offshore Safety Advisory Committee (NOSAC). The meeting will be held on Wednesday, February 19, 1992, in room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC (202) 267–2307. The meeting is scheduled to run from 9 a.m. to 12 noon. Attendance is open to the public. The agenda follows:

1. Subcommittee Reports

(a) Subchapter N Revisions
(b) Clean Air Act Amendments
(c) User Fees

2. Other Issues To Be Discussed

(a) OPA–90 Implementation
(b) Subchapter W status
(c) Subchapter L status
(d) Subchapter I-A status
(e) Future Inspection Regulations for Crewboats
(f) Ocean Tow of Jackup Drilling Units
(g) Jones Act Considerations

With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the NOSAC Executive Director no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each Committee member, 20 copies of the written materials should be submitted to the Executive Director no later than February 5, 1992.

FOR FURTHER INFORMATION CONTACT: Commander Michael Ashdown, Executive Director, National Offshore Safety Advisory Committee (NOSAC), room 1405, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–2307.

Dated: January 10, 1992.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–1194 Filed 1–15–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Tuskegee Savings and Loan Association, F.A., Tuskegee, AL; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Tuskegee Savings and Loan Association, F.A., Tuskegee, Alabama ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on October 11, 1991.

Dated: January 9, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–1121 Filed 1–15–92; 8:45 am]

BILLING CODE 6720–01–M

[AC–1; OTS No. 3723]

Bargersville Federal Savings Bank, Bargersville, IN; Final Action; Approval of Conversion Application

Notice is hereby given that on December 27, 1991, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Bargersville Federal Savings Bank, Bargersville, Indiana, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Indianapolis Area Office, Office of Thrift Supervision, 8250 Woodfield Crossing Blvd., suite 305 Indianapolis, Indiana 46240.

Dated: January 2, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–1122 Filed 1–15–92; 8:45 am]

BILLING CODE 6720–01–M

[AC–2; OTS No. 0449]

Calumet Federal Savings and Loan Association of Chicago, Dolton, IL; Final Action; Approval of Conversion Application

Notice is hereby given that on December 24, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Calumet Federal Savings and Loan Association of Chicago, Dolton, Illinois for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G. Street, NW., Washington, DC 20552, and The Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: January 9, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–1123 Filed 1–15–92; 8:45 am]

BILLING CODE 6720–01–M

Champion Federal Savings and Loan Association Bloomington, IL; Final Action; Approval of Conversion Application

Date: January 8, 1992.

Notice is hereby given that on December 30, 1991, the Director of the Office of Thrift Supervision approved the application of Champion Federal Savings and Loan Association, Bloomington, Illinois, for permission to convert to the federal stock form of organization pursuant to a voluntary supervisory conversion, and the acquisition of the conversion stock by First of American Bank Corporation, Kalamazoo, Michigan.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–1119 Filed 1–15–92; 8:45 am]

BILLING CODE 6720–01–M

[AC–64; OTS No. 0294]

First Federal Savings Bank of Western Maryland, Cumberland, MD; Final Action; Approval of Conversion Application

Notice is hereby given that on December 20, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings Bank of Western Maryland, Cumberland, Maryland for permission to convert to the stock form of organization. Copies of the application

are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30348–5217.

Dated: January 8, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–1120 Filed 1–15–92; 8:45 am]

BILLING CODE 6720–01–M

[AC–61; OTS No. 0494]

Highland Federal Savings Bank, Cincinnati, OH: Final Action; Approval of Conversion Application

Notice is hereby given that on November 12, 1991, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Highland Federal Savings Bank, Cincinnati, Ohio, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Cincinnati Area Office, Office of Thrift Supervision, 525 Vine Street, 7th Floor, Cincinnati, Ohio 45201–5364.

Dated: January 9, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–1118 Filed 1–15–92; 8:45 am]

BILLING CODE 6720–01–M

[AC–62: OTS No. 1614]

Western Savings and Loan Association, Glenview, IL; Final Action; Denial of Voluntary Supervisory Conversion Application

Western Bancorp Inc., Glenview, Illinois; Final Action; Denial of Holding Company Application

Notice is hereby given that on November 15, 1991, the Director of the Office of Thrift Supervision or his designee denied the application of Western Savings and Loan Association, Glenview, Illinois, for permission to convert to the stock form of organization in a voluntary supervisory conversion. In addition, notice is hereby given that on November 15, 1991, the Director of the Office of Thrift Supervision or his designee denied the application of Western Bancorp Inc., Glenview, Illinois, for permission to acquire Western Savings and Loan Association, in connection with its conversion to stock form. Copies of the applications are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois, 60601–4360.

Dated: January 9, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–1117 Filed 1–15–92; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 11
Thursday, January 16, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:30 a.m., Tuesday, January 21, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Issues related to the definition of highly leveraged transactions. (Proposed earlier for public comment; Docket No. R-0734)
2. Issues concerning the treatment of intangible assets for purposes of calculating regulatory capital.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: January 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1249 Filed 1-14-92; 9:48 am]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:30 a.m., Tuesday, January 21, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1250 Filed 1-14-92; 9:48 am]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-92-1]

TIME AND DATE: January 23, 1992 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings
2. Minutes
3. Ratification List
4. Petitions and complaints
   Certain manual resuscitators and component parts thereof (Docket Number 1666).
5. Any items left over from previous agenda
6. FY 92 Expenditure Plan and FY 94 Authorization Request

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205-2000.

Dated: January 13, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-1333 Filed 1-14-92; 3:01 pm]

BILLING CODE 7020-02-M

Corrections

Federal Register
Vol. 57, No. 11
Thursday, January 16, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 911192-1292]

Western Pacific Bottomfish and Seamount Groundfish Fisheries

Correction

In notice document 91-31246, beginning on page 67598, in the issue of Tuesday, December 31, 1991, make the following correction:

On page 67598, in the third column, in the second full paragraph, in the ninth line, "Lone" should read "Zone".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91F-0391]

Ciba-Geigy Corp.; Filing of Food Additive Petition

Correction

In notice document 91-30217 appearing on page 65906 in the issue of Thursday, December 19, 1991, make the following correction:

On page 65906, in the second column, in the ninth line, under **SUPPLEMENTARY INFORMATION**, "*Antioxidants and/or Stabilizers for Polymers*" should read as set forth and in the tenth line, "(21 CFR 178.2010)," should read "(21 CFR 178.2010)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91F-0449]

Polysar Rubber Corp.; Filing of Food Additive Petition

Correction

In notice document 91-30216 appearing on page 65907 in the issue of Thursday, December 19, 1991, make the following corrections:

1. On page 65907, in the third column, under **FOR FURTHER INFORMATION CONTACT**, in the third line, "NW." should read "SW.".

2. On the same page, in the same column, in the tenth line, under **SUPPLEMENTARY INFORMATION**, "Rubber Articles Intended for Repeated Use." should read "*Rubber Articles Intended for Repeated Use*".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89P-0329]

Eggnog Deviating From Identity Standard; Amendment of Temporary Permit for Market Testing

Correction

In notice document 91-30215 beginning on page 65906 in the issue of Thursday, December 19, 1991, make the following correction:

1. On page 65906, in the third column, under **SUMMARY**, in the second line, "(FAD)" should read "(FDA)" and in the third line insert "is" after "it".

2. On page 65907, in the 1st column, in the 2d full paragraph, in the 12th line from the bottom, "14321" should read "13421".

BILLING CODE 1505-01-D

federal register

Thursday
January 16, 1992

Part II

Department of Housing and Urban Development

24 CFR Part 12

Accountability in the Provision of HUD Assistance; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

24 CFR Part 12

[Docket No. N-92-3347; FR-3064-N-01]

Accountability in the Provision of HUD Assistance

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of effective date of regulations and additional information.

SUMMARY: This notice gives the public (including applicants for, and recipients of, HUD assistance) additional information on the implementation of section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12).

For assistance that HUD makes available to recipients, the notice provides information to the public on:

—How to gain access to the applications and other information upon which the Department bases its decision to provide or deny assistance on a competitive basis (24 CFR 12.14(b));

—How to obtain information on those that receive discretionary or competitive assistance from the Department (24 CFR 12.16(a));

—How to gain access to the material that applicants for HUD assistance for a specific project or activity must disclose under 24 CFR part 12, subpart C; and

—How to gain access to the decisions and other information used in making assistance determinations with respect to specific housing projects under 24 CFR part 12, subpart D.

The notice also provides guidance on the responsibilities of those that receive assistance from the Department and that in turn make the assistance available to subrecipients. These responsibilities include:

—Providing public access to the applications and other information upon which the recipient bases its decision to provide or deny assistance on a competitive basis to a subrecipient (24 CFR 12.14(c));

—Providing information to the public on the subrecipients of assistance they provide on a competitive basis (24 CFR 12.16(b)); and

—Providing public access to the material that subrecipient applicants for assistance for a specific project or activity must disclose to the recipient under 24 CFR part 12, subpart C.

Finally, the notice announces the effective date of 24 CFR 12.14(c) and 12.16(b), and 24 CFR part 12, subpart C.

DATES: Effective dates: The additional information on the implementation of section 102 of the Department of Housing and Urban Development Reform Act (24 CFR part 12) is effective on January 16, 1992.

24 CFR 12.14(c) and 12.16(b), and 24 CFR part 12, subpart C, are effective on January 16, 1992.

Implementation:

—The provisions of section I. 1. of this notice (§§ 12.14(b) and 12.16(a) of the final rule) apply to all decisions to provide or deny assistance made by the Department on or after April 15, 1991.

—The provisions of section III. of this notice (subpart D of the final rule) apply to all determinations made by the Assistant Secretary for Housing-Federal Housing Commissioner and the Assistant Secretary for Public and Indian Housing under 24 CFR part 12, subpart D, with respect to housing projects involving the Low Income Housing Tax Credit.

Applicability:

—24 CFR 12.14(c) and 12.16(b), and the related provisions of section I. 2. of this notice, apply with respect to all decisions by a recipient of HUD assistance to provide or deny assistance on or after March 16, 1992.

—For assistance made available to a subrecipient by a state or a unit of general local government, 24 CFR part 12, subpart C, and the related provisions of section II. of this notice, apply to all applications solicited (in the case of a competition) or otherwise received by the state or unit of general local government on or after March 16, 1992.

—For assistance made available to a recipient by HUD, or to a subrecipient by an entity other than a state or unit of general local government, 24 CFR part 12, subpart C, and the related provisions of section II. of this notice, apply to all applications solicited (in the case of a competition) or otherwise received by HUD or the entity on or after January 16, 1992, except that 24 CFR part 12, subpart C, and the related provisions of section II. of this notice, also apply to all applications solicited by HUD pursuant to Notices of Funding Availability for FY 1992 published in the **Federal Register** for the HOPE for Public and Indian Housing Homeownership program (HOPE 1), the HOPE for Homeownership of Multifamily Units program (HOPE 2), and the HOPE for Homeownership of Single Family Homes program (HOPE 3).

—24 CFR part 12, subpart D, and the related provisions of section III. of this notice (other than for determinations made by the Assistant Secretary for Housing-Federal Housing Commissioner and the Assistant Secretary for Public and Indian Housing with respect to housing projects involving the Low Income Housing Tax Credit) will be effective only upon the publication of further notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For general questions regarding this notice: Arnold J. Haiman, Director, Office of Ethics, Office of Administration, room 2158, telephone (202) 708–3815, TDD (202) 708–1112.

For specific questions regarding programs administered by the Assistant Secretary for Community Planning and Development: Don I. Patch, Director, Office of Block Grant Assistance, Office of Community Planning and Development, room 7286, telephone (202) 708–3587, TDD (202) 708–2565.

For specific questions regarding programs administered by the Assistant Secretary for Public and Indian Housing: Casimir R. Bonkowski, Director, Office of Management and Policy, Office of Public and Indian Housing, room 4228, telephone (202) 708–0713, TDD (202) 708–0850.

For specific questions regarding cross-cutting program areas administered by the Assistant Secretary for Housing-Federal Housing Commissioner: Michael T. Hernandez, Special Assistant to the Assistant Secretary, Office of Housing, room 6106, telephone (202) 708–2495. For questions regarding specific program areas administered by the Assistant Secretary for Housing-Federal Housing Commissioner:

Program area	Contact person	Phone No.
Mortgage Insurance (Valuation)	Edward Winiarski	(202) 708-0624
Mortgage Insurance (Mortgage Credit)	Kerry Mulholland	(202) 708-0283
Section 202 Projects	Bob Wilden	(202) 708-2730
Incentives to Extend Low-Income Use	Kevin East	(202) 708-2300

Program area	Contact person	Phone No.
Transfers of Physical Assets (TPAs)	William Hill	(202) 708-0547
Sales of HUD-Owned Projects	Courtland Wilson	(202) 708-1220
Other Actions on Insured or HUD-Held Projects	William Hill	(202) 708-0547

The TDD number for all Office of Housing contacts is (202) 708–4594.

For specific questions regarding programs administered by the Assistant Secretary for Fair Housing and Equal Opportunity: Laurence Pearl, Director, Office of Program Standards and Evaluation, room 5226, telephone (202) 708–0288, TDD (202) 708–0113.

For specific questions regarding programs administered by the Assistant Secretary for Policy Development and Research: Frederick J. Eggers, Associate Deputy Assistant Secretary, Office of Economic Affairs, room 8204, telephone (202) 708–2770, TDD (202) 708–0770.

All addresses are located at the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. None of the telephone numbers listed above is toll-free.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2535–0101.

Background

On March 14, 1991, the Department published in the **Federal Register** a final rule entitled, "Accountability in the Provision of HUD Assistance." [1] The final rule implements section 102 of the Department of Housing and Urban Development Reform Act of 1989.[2] Section 102 contains a number of provisions designed to ensure greater accountability and integrity in the way in which the Department makes assistance available under certain of its programs. This notice gives the public (including applicants for, and recipients of, HUD assistance) additional information on the implementation of the provisions of section 102 of the Reform Act set forth below. For the convenience of the reader, appendix E contains a chart describing the provisions discussed in this notice.

[1] 56 FR 11032. For ease of reference, the rule is referred to as the "final rule" in this notice.

[2] Pub. L. 101–235, approved December 15, 1989. For ease of reference, the law is referred to as the "Reform Act" in this notice.

Table of Contents

I. Documentation and Public Access Requirements: Section 102(a) of the Act

1. Requirements for HUD

a. Section 12.14(b) (Subpart B of the Final Rule)

i. *Summary of provision.* In the case of assistance that it makes available through a competition,[3] HUD must ensure that documentation and other information regarding each application are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letter of support, must be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. In carrying out this requirement, the Department may include in the project file supporting material such as competitive ranking sheets, scores on each of the relevant selection criteria, and other information indicating the basis for the Department's decision.

ii. *Effective date of provision.* The final rule made this provision effective with respect to all decisions to provide or deny assistance made by the Department on or after April 15, 1991. This notice prescribes the procedures the public may use to access the material involved.

iii. *Public access.* All applications and related documentation and other information referred to in § 12.14(b) will be made available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. It should be noted that all the exemptions authorized by § 15.21 apply to the production of material covered by § 12.14(b). This includes the exemption in § 15.21(a)(4) for trade secrets or commercial or financial information that are obtained from a person and are privileged or confidential. It should also be noted that to the extent information in applications for testing under the Fair Housing Initiatives program would identify any of the testers to be used, places to be tested, or otherwise permit someone to deduce that a fair housing test may be occurring, such information will not be disclosed.

[3] The reader should consult appendix A of this notice for the list of programs covered.

All FOIA requests for information must be in writing, and must be submitted in accordance with the FOIA procedures contained in 24 CFR part 15. The requests must include enough information so that the requested files can be identified. This information typically would include one or more of the following: The approximate date or the Federal Register (FR) number (*e.g.*, FR–1234) of the notice of fund availability; the competition involved, the closing date of the competition, or the date of the award; the HUD program office making the award; and the applicant's name and address, if known.

b. Section 12.16(a) (Subpart B of the Final Rule)

i. *Summary of provision.* In the case of assistance that HUD makes available either through a competition or on a discretionary, but non-competitive basis, HUD must publish a notice in the Federal Register at least quarterly indicating the recipients of the assistance. For each item, the notice will contain:

(1) The name and address of each recipient of assistance;

(2) The name or other means of identifying the project, activity, or undertaking for each such recipient;

(3) The dollar amount of the assistance for each project, activity, or undertaking;

(4) The citation to the statutory, regulatory, or other criteria under which the decision to provide assistance was made; and

(5) The location of the HUD office where the material that is required to be maintained can be inspected and copied, as well as the relevant contact person by name, address, and phone number.

See appendix B of this notice for a list of the programs covered by § 12.16(a).

ii. *Effective date of provision.* The final rule made this provision effective with respect to all decisions by HUD to provide assistance made on or after April 15, 1991. This notice prescribes the procedures the public may use to access the material involved.

iii. *Public access.* Although section 102(a) permits quarterly publication of the notice of funding decisions, the Department generally intends to publish separate notices for each funding decision soon after the decision is made. Notices will be published only for funding decisions: If no decisions are made in a quarter, no notice will be published. The Department has been publishing notices of funding decisions since December 15, 1989—the Reform Act's effective date.

Copies of notices of funding decisions that are published in the Federal Register may be obtained free of charge from the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2084, TDD (202) 708–9300. Requests for additional information about recipient applications may be made under the Freedom of Information Act (24 CFR part 15).

2. Requirements for Recipients of HUD Assistance

a. Summary of Provisions

Both of the following provisions apply to assistance that a recipient receives from HUD through a competition, and in turn makes available on a competitive basis to a subrecipient.

i. *Section 12.14(c) (subpart B of the final rule).* Each HUD recipient [4] must ensure that documentation and other information regarding each application submitted to the recipient by a subrecipient applicant are adequate to indicate the basis upon which assistance was provided or denied. The HUD recipient must make this material, including any letters of support, available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance.

ii. *Section 12.16(b) (subpart B of the final rule).* State and unit of general local government recipients must notify the public of the subrecipients of the assistance. The notification must contain:

(1) The name and address of each subrecipient of assistance;

(2) The name or other means of identifying the project, activity, or undertaking for each such subrecipient;

(3) The dollar amount of the assistance for each project, activity, or undertaking; and

(4) The citation to the statutory, regulatory, or other criteria under which the decision to provide assistance was made.

b. Discussion

These requirements essentially call upon HUD recipients to perform functions for their subrecipients that are parallel to those discussed above that HUD is required to perform for its recipients. It should be noted that § 12.14(c) applies to all covered recipients; § 12.16(b) only applies to recipients that are states and units of general local government.

It should also be noted that both of these requirements depend on the existence of a competitive distribution of assistance BOTH at the HUD level [5] AND at the recipient level. For example, if a CDBG Entitlement city receives a CDBG *formula* grant from HUD, and then awards the proceeds of the grant *competitively*, the city is not covered by this aspect of part 12. The result is the same if the HUD assistance is distributed competitively, but the recipient does not use a competition to distribute the assistance to subrecipients.

An example of a situation in which the requisite "dual" competitive process is present involves HUD reallocations of Emergency Shelter Grants to a state or to a unit of general local government, which in turn makes the assistance available to a nonprofit organization pursuant to a competition.

c. Effective Date of Provision

The final rule contained no effective date for these provisions, but stated that their effectiveness would be announced in a subsequent notice published in the Federal Register. To give states and other recipients adequate time to implement this provision for their programs, this notice makes this provision effective on March 16, 1992, with respect to all decisions to provide or deny assistance, as appropriate, made by the recipient on or after that date.

d. Recipient Obligations

i. *Section 12.14(c) (subpart B of the final rule).* Section 12.14(c) imposes two requirements on recipients. First, they must ensure that there is sufficient documentation to indicate the basis for each decision. The Department believes that recipients should have broad latitude in developing procedures for complying with this requirement. Accordingly, this notice does not prescribe any compliance standards.

Second, recipients must make the above material available for public inspection for a five-year period. Here again, the Department believes that recipients should be given discretion to establish procedures to meet the statutory requirement. At a minimum, however, recipients must:

—Have a viable system for retaining the material for the required five-year period;

[4] The term includes persons and entities, such as a state, a unit of general local government, a public housing agency (PHA), an Indian tribe, and a non-profit organization.

[5] See appendix A for a listing of the HUD programs involved.

—Have procedures for handling requests for public inspection that ensure prompt and reasonable access to the material requested;
—Retain the original files themselves, and permit subrecipients to keep only copies of them; and
—In the case of states and units of general local government, notify the public as to how material can be accessed.

It should be noted that section 102 and part 12 only preempt state or local law that conflicts with the collection of covered information. They do not preempt state and local laws governing the disclosure of information to the public. Thus, although recipients must collect the required information, their duty to disclose information submitted to it by subrecipients is subject to state and local law.

ii. *Section 12.16(b) (subpart B of the final rule*). Notification under § 12.16(b) must be done at least every six months, and can be accomplished in any way conducive to provide information to the public. Methods may include: Advertisements or notices in major regional or local papers; notices in publications that are the state equivalent of the **Federal Register**; press releases to newspapers, or to radio and television stations; public posting in court houses or other appropriate public buildings; or any other way that effectively reaches the general public.

e. Monitoring and Enforcement

The Department will review recipient performance under §§ 12.14(c) and 12.16(b) in connection with reviews conducted under the underlying assistance program. Any violation of these requirements will be treated as a violation of the terms under which the underlying assistance was made available to the recipient.

II. Applicant Disclosures: Sections 102 (b) and (c) of the Reform Act

1. Overview

Subpart C of 24 CFR part 12 requires applicants for assistance for a specific project or activity from HUD, from a state or a unit of general local government, or from certain other entities, to make a number of disclosures if the applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it is requesting assistance from HUD for a specific housing project that involves assistance from other governmental sources.

Applicants subject to subpart C must disclose the following:
—Assistance from other government sources in connection with the project,
—The financial interests of persons in the project,
—The sources of funds to be made available for the project, and
—The uses to which the funds are to be put.

2. Specific Guidance Regarding Applicability

Applicants for assistance made available for a specific project or activity must make the disclosures described in subsection 3. of the section, if the application meets the test in EITHER paragraph a. or b., below:

a.(1) Nature of Assistance

The applicant submits an application for assistance for a specific project or activity in which:

(A) HUD makes assistance available to a recipient for a specific project or activity; [6]

(B) HUD makes assistance available [7] to a *state or to a unit of general local government,* and the *state or unit of general local government* in turn makes the assistance available for a specific project or activity to a *subrecipient;* or

(C) HUD makes assistance available to *any other entity* (such as a public housing agency (PHA)) for a specific project or activity, where the application is required by statute or regulation to be submitted to HUD for any purpose; and

(2) Dollar Threshold

The applicant—to HUD or to a state or a unit of general local government, as appropriate—has received, or can reasonably be expected to receive, an aggregate amount of all forms of covered assistance from HUD, states, and units of general local government, in excess of $200,000 during the federal fiscal year (October 1 through September 30) in which the application is submitted. (See 24 CFR 12.32(a) (2) and (3) for detailed guidance on how the threshold is calculated.)

b. Housing Projects With Other Government Assistance

The applicant submits an application for assistance from HUD for a specific housing project that involves other government assistance.[8] There is no dollar threshold for this criterion: Any other government assistance triggers the requirement. For further guidance on this criterion, see 24 CFR 12.50.

3. Specific Guidance Regarding Disclosures

At the time of application, the applicant must disclose:
—Other government assistance to be used with respect to the activities to be carried out with the assistance, or if none, a certification to that effect.
—The pecuniary interest [9] of any developer, contractor, or consultant involved in the application for the assistance (or in the planning, development, or implementation of the project or activity involved) and any other person who has a pecuniary interest in the project or activities for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance, whichever is lower.
—The sources of funds to be made available for the activities, and the uses to which the funds are to be put.

In the case of Mortgage Insurance under 24 CFR subtitle B, chapter II, the mortgagor is responsible for making the required disclosures, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department.

4. Specific Guidance Regarding Updates

For covered assistance that HUD makes available to a recipient, the recipient must submit updates to the Department to reflect substantial changes in the disclosures required under subpart C.

For assistance that HUD makes available to a state or to a unit of general local government, which in turn makes the assistance available to a subrecipient, the subrecipient must

[6] See appendix C for a list of assistance programs subject to subpart C.

[7] The assistance that HUD makes available to a state or unit of general local government does not have to come from a covered program referred to in appendix C. For this purpose, assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department.

[8] "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the federal government (other than that requested from HUD in the application), a state, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.

[9] "Pecuniary interest" is defined, at § 12.32 of the final rule, as: "any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activities, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activities, or receives compensation for any goods or services provided in connection with the project or activities."

submit similar updates to the state or unit of general local government.

For assistance that HUD makes available to an entity described in section II.2.a.(1)(C), updates must be submitted to the Department.

The period during which updates are required begins when the application is submitted and ends when the applicant has discharged all its obligations under the terms of the assistance (including the submission of any required reports). The precise period for individual programs will be established in the grant or cooperative agreement for the assistance involved. Updates must be submitted within 30 days of the change requiring the update.

All programs administered by the Assistant Secretary for Community Planning and Development are subject to a "lesser of" dollar/percentage update threshold; *e.g.*, an update is required if a change in other government assistance exceeds the amount of such assistance in connection with the project that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower). The other program areas also use these thresholds, with two exceptions. First, all changes in previously disclosed other government assistance must be reported. Second, for covered programs administered by the Assistant Secretary-Federal Housing Commissioner and the Assistant Secretary for Public and Indian Housing, all changes in previously disclosed sources or uses of funds involving tax credits must be reported. The reader is urged to review the detailed guidance on updates contained in the final rule at 56 FR 11047.

5. Effective Date of Provision

The final rule provided that subpart C would only take effect upon announcement by subsequent notice in the Federal Register. This notice provides for the following effectiveness for subpart C:

—For assistance made available to a subrecipient by a state or a unit of general local government, 24 CFR part 12, subpart C, and the related provisions of this section, apply to all applications solicited (in the case of a competition) or otherwise received by the state or unit of general local government on or after March 16, 1992.

—For assistance made available to a recipient by HUD, or to a subrecipient by an entity other than a state or unit of general local government, 24 CFR part 12, subpart C, and the related provisions of this section, apply to all applications solicited (in the case of a competition) or otherwise received by HUD or the entity on or after January 16, 1992. The reader should note that these provisions also apply to all applications solicited by HUD pursuant to Notices of Funding Availability for FY 1992 published in the Federal Register for the HOPE for Public and Indian Housing Homeownership program (HOPE 1), the HOPE for Homeownership of Multifamily Units program (HOPE 2), and the HOPE for Homeownership of Single Family Homes program (HOPE 3).

6. Method of Implementation

a. Assistance Requested From HUD

i. *Disclosures.* Appendix F contains the form to be used by applicants for, and recipients of, HUD assistance to make the applicant disclosures and updates required by 24 CFR part 12, subpart C.

ii. *Monitoring and enforcement.* For applicant (initial) disclosures, the Department wishes to make clear its firm intent in no case to commit covered assistance to the applicant, unless all subpart C's disclosures have been provided.

For update disclosures, the Department will review recipient performance in providing updates under section 102(c) of the Reform Act in connection with reviews conducted under the underlying assistance program.

Any violation of these requirements will be treated as a violation of the terms under which the underlying assistance was made available to the recipient.

b. Assistance Requested From States and Units of General Local Government

i. *Disclosures.* States and units of general local government are responsible for developing their own mechanisms for collecting the required disclosures and updates. They may—but are not required to—use the procedures that the Department establishes for the program. *In no case* are states and units of general local government, or PHAs or other entities described in section II.2.a.(1)(C), to commit covered assistance, unless all subpart C's disclosures have been provided.

ii. *Monitoring and enforcement.* The Department will review recipient performance with respect to both applicant and update disclosures under section 102 of the Reform Act in connection with reviews conducted under the underlying assistance program. Any violation of these requirements will be treated as a violation of the terms under which the underlying assistance was made available to the recipient.

7. Public Access

a. Assistance Requested From HUD

HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosure and update—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. As above, the exemptions to the production of material under § 15.21 will apply. Although qualification for an exemption will be determined on a case-by-case basis, the reader should note that information such as sources and uses of funds and the percentage of financial interests in a project will generally meet the "trade secrets" exemption contained in § 15.21(a)(4) and, therefore, will generally not be subject to disclosure.

All requests for information must be in writing, and must be submitted in accordance with the FOIA procedures contained in 24 CFR part 15. The requests must include enough information so that the requested files can be identified.

b. Assistance Requested From States and Units of General Local Government

States and units of general local government must make all applicant disclosure reports available to the public for five years in the case of applications for competitive assistance, and for three years in the case of other applications. Update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years.

As noted in connection with the discussion of § 12.14(c) (section I.2.d.i., above), the Department believes that these recipients should be given discretion to establish procedures to provide the required information to the public. At a minimum, however, they must:

—Have a viable system for retaining the material for the required period;

—Have procedures for handling requests for public inspection that ensure prompt and reasonable access to the material requested;

—Notify the public as to how material can be accessed; and
—Retain the original files themselves, and permit subrecipients to keep only copies of them.

As noted above, although states and units of general local government must collect the information required by subpart C, the Reform Act does not override state and local law governing the disclosure of such information. Thus, states and units of general local government must make the information collected pursuant to subpart C available for public inspection, provided that the disclosure is not inconsistent with state or local law.

III. "Subsidy-layering" Determinations: Section 102(d) of the Reform Act

1. Summary of Provision

a. Before Providing the Assistance

Section 12.50 of the final rule requires HUD to certify that assistance made available by HUD for a specific housing project will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources.

This is the so-called "subsidy-layering" rule—the Reform Act authority permitting HUD to reduce the amount of HUD assistance if the HUD assistance and any other government assistance involved in the project are more than is necessary to make the housing project feasible.

It should be noted that this requirement applies to assistance made available by HUD [10] for a *housing project.*[11] It does not cover the secondary allocation of assistance from a recipient to a subrecipient, unless the subrecipient's application is submitted to HUD for action. It should also be noted that the requirement is triggered only when other government assistance is present in the project. It does not apply to requests for HUD assistance, where no other government assistance is involved. See appendix D for a listing of the programs subject to this requirement.

It should also be noted that the "subsidy-layering" provisions apply without regard to whether the applicant is required to make disclosures under subpart C of the final rule.

b. Subsequent Adjustments

Section 12.52 of the final rule authorizes HUD to make adjustments to assistance already provided for a specific housing project on the basis of update disclosures that are required under subpart C.

2. Public Access

a. Record of Decisions

The preamble to the final rule indicated that the Department will not implement section 102(d) by notice and comment rule making under 24 CFR part 10 at this time, but instead will proceed by decision making on a case-by-case basis with regard to all aspects of section 102(d) that are not covered by existing regulations. The preamble also pointed out that the rationale for each decision will be reduced to writing, and will be made available for public inspection. (56 FR 11038) Copies of these decisions will be available, free of charge, for a three-year period, through the following contacts:

—For programs administered by the Assistant Secretary for Community Planning and Development:
—For Community Development Block Grants, Don I. Patch, Director, Office of Block Grant Assistance, Office of Community Planning and Development, room 7286, telephone (202) 708–3587, TDD (202) 708–2565.
—For McKinney Act homeless assistance programs, James Forsberg, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, room 7262, telephone (202) 708–4300, TDD (202) 708–2565.
—For the Neighborhood Demonstration Program, Syl Angel, Director, Office of Technical Assistance, Office of Community Planning and Development, room 7148, telephone (202) 708–2090, TDD (202) 708–2565.

For programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner, see the listing under **FOR FURTHER INFORMATION CONTACT**, above.

For programs administered by the Assistant Secretary for Fair Housing and Equal Opportunity, Lauretta Dixon, Supervisory Equal Opportunity Specialist for Funded Programs, room 5218, telephone (202) 708–0455, TDD (202) 708–0113.

For programs administered by the Assistant Secretary for Public and Indian Housing, Casimir Bonkowski, Director, Office of Management and Policy, room 4228, telephone (202) 708–0713, TDD (202) 708–0850. None of the above telephone numbers is toll-free.

b. Additional Information

Additional information about applications and HUD certifications and assistance adjustments are to be made under the Freedom of Information Act (24 CFR part 15).

Other Matters

Environmental Review

In accordance with 40 CFR 1508.4 of the regulations and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment and, therefore, are exempt from further environmental review.

Executive Order 12812, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the states (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. The rule does provide additional reporting and disclosure requirements on states and units of general local government, but the Department does not believe these requirements will have the requisite federalism implications. In any event, they are almost entirely mandated by statute.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being. The reporting and disclosure requirements of the rule should have little or no positive or negative effect on the family.

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[10] Section 212 of the Cranston-Gonzalez Affordable Housing Act of 1990 (Pub. L. 101–625) provides an alternative mechanism for complying with section 102(d) of the Reform Act for the HOME program. Therefore, assistance that HUD makes available to participating jurisdictions under the HOME program is not subject to this notice. Of course, HUD would take HOME assistance into account in making section 102(d) certifications with respect to other assistance the HUD may be providing for a project that involves HOME assistance as well.

[11] Section 12.50 of the final rule defines "housing project" as—

(a) Property containing five or more dwelling units that is to be used for primarily residential purposes, including (but not limited to) living arrangements such as independent group residences, board and care facilities, group homes, and transitional housing, but excluding facilities that provide primarily non-residential services, such as intermediate care facilities, nursing homes, and hospitals; and

(b) Residential rental property receiving a tax credit under Federal, State, or local law.

Dated: January 6, 1992.

Jim E. Tarro,

Assistant Secretary for Administration.

Appendix A

Appendix A contains a list of the competitive assistance programs administered by the Department that have elements covered by § 12.14(b) of the final rule (documentation and public access requirements). This is the list that was published as § 12.10 of the final rule. The reader should be aware that the Department will update this list periodically through changes to § 12.10. The list is as follows:

(1) Section 312 Rehabilitation Loans under 24 CFR part 510 (except loan amounts less than $200,000 and loans for single family properties).[12]

(2) Rental Rehabilitation Grants under 24 CFR parts 511 (only HUD-administered grants under subpart F and technical assistance under subpart A).[13]

(3) The following programs under title I of the Housing and Community Development Act of 1974:

(i) Community Development Block Grants under 24 CFR part 570 (only the HUD-administered Small Cities program under subpart F),

(ii) Special Purpose Grants (only technical assistance and assistance for Historically Black Colleges) under section 105 of the Department of Housing and Urban Development Reform Act of 1989,

(iii) The Work Study program under section 107(c) of the Housing and Community Development Act of 1974, and

(iv) Community Development Block Grants to Indian Tribes under title I of the Housing and Community Development Act of 1974.

(4) Emergency Shelter Grants under 24 CFR part 576 (only HUD reallocations under §§ 576.63 through 576.67).

(5) Transitional Housing under 24 CFR part 577.

(6) Permanent Housing for Handicapped Homeless Persons under 24 CFR part 578.

(7) Section 8 Housing Assistance Payments—Existing Housing and Moderate Rehabilitation under 24 CFR part 882 (including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(8) Supportive Housing for the Elderly under section 202 of the Housing Act of 1959, and Supportive Housing for Persons with Disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act.

(9) Section 8 Housing Assistance Payments—Loan Management Set-Aside under 24 CFR part 886, subpart A (except when used as an incentive in connection with an approved Plan of Action under the Emergency Low Income Housing Preservation Act of 1987, as amended).

(10) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C (except when used as an incentive in connection with an approved Plan of Action under the Emergency Low Income Housing Preservation Act of 1987, as amended).

(11) Housing Vouchers under 24 CFR part 887.

(12) Low-Rent Housing Opportunities under 24 CFR 904.

(13) Indian Housing under 24 CFR part 905.

(14) Public Housing Development under 24 CFR part 941.

(15) Comprehensive Improvement Assistance under 24 CFR part 968, subpart B.

(16) Resident Management under 24 CFR part 964, subpart C.

(17) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(18) Nehemiah Grants under 24 CFR part 280.[14]

(19) Research and Technology Grants under title V of the Housing and Urban Development Act of 1970.

(20) Congregate Services under the Congregate Housing Services Act of 1978 and section 802 of the Cranston-Gonzalez National Affordable Housing Act.

(21) Counseling under section 106 of the Housing and Urban Development Act of 1968.

(22) Fair Housing Initiatives under 24 CFR part 125.

(23) Public Housing Drug Elimination Grants under section 5129 of the Anti-Drug Abuse Act of 1988.

(24) Fair Housing Assistance under 24 CFR part 111.

(25) Public Housing Early Childhood Development Grants under section 222 of the Housing and Urban-Rural Recovery Act of 1983.

(26) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

(27) Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.

(28) Planning and Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

(29) Planning and Implementation Grants for HOPE Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

(30) Implementation Grants for HOPE for Homewnership of Single Family Homes under title IV, subtitle C, of the Cranston-Gonzalez National Affordable Housing Act.

(31) HOPE for Elderly Independence Demonstration under section 803 of the Cranston-Gonzalez National Affordable Housing Act.

Appendix B

Appendix B contains a list of the assistance programs administered by the Department that have elements covered by § 12.16(a) of the final rule (publication of assistance "winners"). The list contains the same competitive assistance programs referred to in appendix A. It also contains programs that provide assistance on a discretionary (non-formula, non-demand, non-competitive basis, including Research and Technology Grants under title V of the Housing and Urban Development Act of 1970, Fair Housing Assistance under 24 CFR part 111, technical assistance under section 105 of the Department of Housing and Urban Development Reform Act of 1989, and assistance for Historically Black Colleges under section 105 of the Department of Housing and Urban Development Reform Act of 1989.

The full list was published as § 12.10 of the final rule. The reader should be aware that the Department will update this list periodically through changes to § 12.10.

Appendix C

Appendix C contains a list of the assistance programs administered by the Department that have elements covered by subpart C of part 12 of the final rule (applicant disclosures). This is the same list that was published in § 12.30 of the final rule. The reader should be aware that the Department will update this list periodically through changes to § 12.30. The list is as follows:

(1) Section 312 Rehabilitation Loans under 24 CFR part 510, except loans for single family properties.[15]

(2) Applications for grant amounts for a specific project or activity under the Rental Rehabilitation Grant program under 24 CFR part 511 made to:

(i) A state grantee under subpart F;

(ii) A unit of general local government or a consortium of units of general local government receiving funds from a state or directly from HUD (whether or not by formula) under subparts D, F, and G; and

(iii) HUD, for technical assistance under § 511.3.

(Excludes formula distributions to states, units of general local government, or consortia of units of general local government under subparts D and G, within-year reallocations under subpart D, and the HUD-administered Small Cities program under subpart F.)[16]

(3) Applications for grant amounts for a specific project or activity under title I of the Housing and Community Development Act of 1974 made to:

(i) HUD, for a Special Purpose Grant under section 105 of the Department of Housing and Urban Development Reform Act of 1989 for technical assistance, the Work Study program, or Historically Black colleges,

(ii) HUD, for a loan guarantee under 24 CFR part 570, subpart M;

(iii) HUD, for a grant to an Indian tribe under title I of the Housing and Community Development Act of 1974;

(iv) HUD, for a grant under the HUD-administered Small Cities program under 24 CFR part 570, subpart F; and

[12] Note that this program was repealed by section 289(a)(2) of the Cranston-Gonzalez National Affordable Housing Act.

[13] Note that this program was repealed by the Cranston-Gonzalez National Affordable Housing Act.

[14] Note that this program was repealed by section 289(a)(3) of the Cranston-Gonzalez National Affordable Housing Act.

[15] See footnote for appendix A, above.

[16] See footnote for appendix A, above.

(v) A state or unit of general local government under 24 CFR part 570.

(Excludes formula distributions by HUD to states and units of general local government under 24 CFR part 570, and Special Purpose Grants by HUD to Insular Areas or for the correction of formula errors under section 105 of the Department of Housing and Urban Development Reform Act of 1989.)

(4) Applications for grant amounts for a specific project or activity under the Emergency Shelter Grants program under 24 CFR part 576 made to a state or to a unit of general local government, including a Territory.

(Excludes formula distributions to states and units of general local government (including Territories); reallocations to states, units of general local government (including Territories), and non-profit organizations; and applications to an entity other than HUD or a state or unit of general local government.)

(5) Transitional Housing under 24 CFR part 577.

(6) Permanent Housing and Handicapped Homeless Persons under 24 CFR part 578.

(7) Section 8 Housing Assistance Payments (only project-based housing under the Existing Housing and Moderate Rehabilitation programs under 24 CFR part 882, including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(8) Section 8 Housing Assistance Payments for Housing for the Elderly or Handicapped under 24 CFR part 885.

(9) Supportive Housing for the Elderly under section 202 of the Housing Act of 1959, and Supportive Housing for Persons with Disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act.

(10) Section 8 Housing Assistance Payments—Special Allocations—under 24 CFR part 886.

(11) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C.

(12) Low-Rent Housing Opportunities under 24 CFR part 904.

(13) Indian Housing under 24 CFR part 905.

(14) Public Housing Development under 24 CFR part 941.

(15) Comprehensive Improvement Assistance under 24 CFR part 968, subpart B.

(16) Resident Management under 24 CFR part 964, subpart C.

(17) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(18) Nehemiah Grants under 24 CFR part 280.[17]

(19) Research and Technology Grants under title V of the Housing and Urban Development Act of 1970.

(20) Congregate Services under the Congregate Housing Services Act of 1978.

(21) Counseling under section 106 of the Housing and Urban Development Act of 1968.

(22) Fair Housing Initiatives under 24 CFR part 125.

(23) Public Housing Drug Elimination Grants under section 5129 of the Anti-Drug Abuse Act of 1988.

(24) Fair Housing Assistance under 24 CFR part 111.

(25) Public Housing Early Childhood Development Grants under section 222 of the Housing and Urban-Rural Recovery Act of 1983.

(26) Mortgage Insurance under 24 CFR subtitle B, chapter II (only multifamily and non-residential).

(27) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

(28) Shelter Plus Care Assistance under section 837 of the Cranston-Gonzales National Affordable Housing Act.

(29) Planning and Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

(30) Planning and Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

(31) Hope for Elderly Independence Demonstration under section 803 of the Cranston-Gonzalez National Affordable Housing Act.

The Department will add other programs to this list, as appropriate.

Appendix D

Appendix D contains a list of the assistance programs administered by the Department that have elements covered by subpart D of part 12 of the final rule ("subsidy layering"). This is the same list that was published in § 12.50 of the final rule. The reader should be aware that the Department will update this list periodically through changes to § 12.50. The list is as follows:

(1) Section 312 Rehabilitation Loans under 24 CFR part 510, except loans for single family properties.[18]

(2) Community Development Block Grants under 24 CFR part 570 (only loan guarantees under subpart M, grants to Indian tribes under title I of the Housing and Community Development Act of 1974, and grants under the HUD-administered Small Cities program under subpart F).

(3) Transitional Housing under 24 CFR part 577.

(4) Permanent Housing for Handicapped Homeless Persons under 24 CFR part 578.

(5) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

(6) Section 8 Housing Assistance Payments (only project-based housing under the Existing Housing and Moderate Rehabilitation programs under 24 CFR part 882, including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(7) Supportive Housing for the Elderly under section 202 of the Housing Act of 1959, and Supportive Housing for Persons with Disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act.

(8) Section 8 Housing Assistance Payments for Housing for the Elderly or Handicapped under 24 CFR part 885.

(9) Section 8 Housing Assistance Payments—Special Allocations—under 24 CFR part 886.

(10) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C.

(11) Low-Rent Housing Opportunities under 24 CFR 904.

(12) Indian Housing under 24 CFR part 905.

(13) Public Housing Development under 24 CFR part 941.

(14) Comprehensive Improvement Assistance under 24 CFR part 968, subpart B.

(15) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(16) Nehemiah Grants under 24 CFR part 280.

(17) Mortgage Insurance under 24 CFR subtitle B, chapter II (only multifamily projects).

(18) Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.

(19) Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

(20) Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

Appendix E

To help the reader understand the requirements of the provisions discussed in this notice, the Department is providing the following chart. It contains an overview of the types of assistance covered by each subpart and of the requirements imposed, both in terms of the substantive requirements and the entity that must carry them out:

[17] Note that this program was repealed by section 289(a)(3) of the Cranston-Gonzalez National Affordable Housing Act.

[18] See footnote for appendix A, above.

Subpart	Assistance covered	Requirements; who must comply
Subpart B—Notice and Documentation of Assistance	Assistance made available by HUD through competition.	*HUD:* Ensure that documentation is sufficient to indicate the basis on which the assistance was provided or denied. Five-year period for public inspection of documentation. (§ 12.14(b))
	Assistance made available by HUD through competition or on a discretionary, non-competitive basis. Assistance made available on a competitive basis by a recipient that received the assistance through a HUD competition.	*HUD:* Publish Notice in **Federal Register** regarding decisions to provide assistance. (§ 12.16(a)) *Recipient:* Ensure that documentation is sufficient to indicate the basis on which assistance was provided or denied. Five-year period for public inspection of documentation. (§ 12.14(c)) *State or unit of general local government recipient:* Notify public regarding decisions to provide assistance. (§ 12.16(b))
Subpart C—Disclosure of Information	Assistance made available for a specific project or activity by: —HUD —A State or unit of general local government; or —Another entity, where the application must be submitted to HUD for any purpose. *But only if* the applicant has received, or can reasonably be expected to receive, assistance in excess of $200,000 in the fiscal year. *Or* Assistance from HUD for a specific housing project that involves other government assistance.	*Applicant:* 1. Disclose other government assistance, interested parties, and sources and uses of funds. (§§ 12.32 (a) and (b)) 2. Make updates to reflect substantial changes in information. (§ 12.32(c))
Subpart D—Limitation on Housing Assistance	Assistance made available by HUD for a specific housing project where other government assistance is present.	*HUD:* Certify that the amount of assistance is not more than is necessary to provide affordable housing. Make post-assistance adjustments based on updates, above. (Subpart D)

Appendix F

Appendix F contains the form to be used by applicants for, and recipients of, HUD assistance to make the applicant disclosures and updates required by 24 CFR part 12, subpart C. The form is as follows:

BILLING CODE 4210-01-M

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development
Office of Ethics

OMB Approval No. 2525-0101 (exp. 12/31/94)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 4.)

Part I Applicant/Recipient Information **Indicate whether this is an Initial Report** ☐ **or an Update Report** ☐

1. Applicant/Recipient Name, Address, and Phone (include area code)	Social Security Number or Employer ID Number

2. Project Assisted/ to be Assisted (Project/Activity name and/or number and its location by Street address, City, and State)

3. Assistance Requested/Received	4. HUD Program	5. Amount Requested/Received
		$

Part II. Threshold Determinations -- Applicants Only

1. Are you requesting HUD assistance for a specific project or activity, as provided by 24 CFR Part 12, Subpart C, and have you received, or can you reasonably expect to receive, an aggregate amount of all forms of covered assistance from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sign the certification below and answer the next question.

   I hereby certify that this information is true. (Signature)_____ Date_____

2. Is this application for a specific housing project that involves other government assistance? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sigh this certification.

   I hereby certify that this information is true. (Signature)_____ Date_____

If your answers to both questions are No, you do not need to complete Parts III, IV, or V, but you must sign the certification at the end of the report.

Part III. Other Government Assistance Provided/Requested

Department/State/Local Agency Name and Address	Program	Type of Assistance	Amount Requested/Provided

Is there other government assistance that is reportable in this Part and in Part V, but that is reported only in Part V? ☐ Yes ☐ No

If there is no other government assistance, you must certify that this information is true.

I hereby certify that this information is true. (Signature)_____ Date_____

form HUD-2880 (1/92)
ref. Sec 102, HRA 1989; PL. 101 - 235

Part IV. Interested Parties

Alphabetical list of all persons with a reportable financial interest in the project or activity (for individuals, give the last name first)	Social Security Number or Employee ID Number	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

If there are no persons with a reportable financial interest, you must certify that this information is true.

I hereby certify that this information is true. (Signature)_____ Date_____

Part V. Report on Expected Sources and Uses of Funds

Source

If there are no sources of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature)_____ Date_____

Use

If there are no uses of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature)_____ Date_____

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosure of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

Signature	Date

Public reporting burden for this collection of information is estimated to average 2.5 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 Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2535-0101), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, 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. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §12.34.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions (See Note 1 on last page.)

I. Overview. Subpart C of 24 CFR Part 12 provides for (1) initial reports from applicants for HUD assistance and (2) update reports from recipients of HUD assistance. An overview of these requirements follows.

A. Applicant disclosure (initial) reports: General. All applicants for assistance from HUD for a specific project or activity must make a number of disclosures, if the applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it requests assistance from HUD for a specific housing project that involves assistance from other governmental sources.

Applicants subject to Subpart C must make the following disclosures:

Assistance from other government sources in connection with the project,

The financial interests of persons in the project,

The sources of funds to be made available for the project, and

The uses to which the funds are to be put.

B. Update reports: General. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

C. Applicant disclosure reports: Specific guidance. The applicant must complete all parts of this disclosure form if **either** of the following **two** circumstances in paragraph 1. or 2., below, applies:

1.a. Nature of Assistance. The applicant submits an application for assistance for a specific project or activity (See Note 2) in which:

HUD makes assistance available to a recipient for a specific project or activity; or

HUD makes assistance available to an entity (other than a State or a unit of general local government), such as a public housing agency (PHA), for a specific project or activity, where the application is required by statute or regulation to be submitted to HUD for any purpose; **and**

b. Dollar Threshold. The applicant has received, or can reasonably expect to receive, an aggregate amount of all forms of assistance (See Note 3) from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted. (See Note 4)

2. The applicant submits an application for assistance for a specific housing project that involves other government assistance. (See Note 5) Note: There is no dollar threshold for this criterion: **any** other government assistance triggers the requirement. (See Note 6)

If the Application meets **neither** of these two criteria, the applicant need only complete Parts I and II of this report, as well as the certification at the end of the report. If the Application meets **either** of these criteria, the applicant must complete the entire report.

The applicant disclosure report must be submitted with the application for the assistance involved.

D. Update reports: Specific guidance. During the period in which an application for covered assistance is pending, or in which the assistance is being provided (as indicated in the relevant grant or other agreement), the applicant must make the following additional disclosures:

1. Any information that should have been disclosed in connection with the application, but that was omitted.

2. Any information that would have been subject to disclosure in connection with the application, but that arose at a later time, including information concerning an interested party that now meets the applicable disclosure threshold referred to in Part IV, below.

3. For changes in previously disclosed other government assistance:

For programs administered by the Assistant Secretary for Community Planning and Development, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower).

For all other programs, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed.

4. For changes in previously disclosed financial interests, any change in the amount of the financial interest of a person that exceeds the amount of the previously disclosed interests by $50,000 or by 10 percent of such interests (whichever is lower).

5. For changes in previously disclosed sources or uses of funds:

a. For programs administered by the Assistant Secretary for Community Planning and Development:

Any change in a source of funds that exceeds the amount of all previously disclosed sources of funds by $250,000 or by 10 percent of those sources (whichever is lower); and

Any change in a use of funds under paragraph (b)(1)(iii) that exceeds the amount of all previously disclosed uses of funds by $250,000 or by 10 percent of those uses (whichever is lower).

b. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a source of funds that was previously disclosed.

For all other projects, any change in a source of funds that exceeds the lower of:

The amount previously disclosed for that source of funds by $250,000, or by 10 percent of the amount previously disclosed for that source, whichever is lower; or

The amount previously disclosed for all sources of funds by $250,000, or by 10 percent of the amount previously disclosed for all sources of funds, whichever is lower.

c. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a use of funds that was previously disclosed.

For all other projects, any change in a use of funds that exceeds the lower of:

The amount previously disclosed for that use of funds by $250,000, or by 10 percent of the amount previously disclosed for that use, whichever is lower; or

The amount previously disclosed for all uses of funds by $250,000, or by 10 percent of the amount previously disclosed for all uses of funds, whichever is lower.

Note: Update reports must be submitted within 30 days of the change requiring the update. The requirement to provide update reports only applies if the application for the underlying assistance was submitted on or after the effective date of Subpart C.

II. Line-by-Line Instructions.

A. Part I. Applicant/Recipient Information.

All applicants for HUD assistance specified in Section I.C.1.a., above, as well as all recipients required to submit an update report under Section I.D., above, must complete the information required by Part I. The applicant/recipient must indicate whether the disclosure is an initial or an update report. Line-by-line guidance for Part I follows:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.

2. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

3. Applicants describe the HUD assistance referred to in Section I.C.1.a. that is being requested. Recipients describe the HUD assistance to which the update report relates.

4. Applicants enter the HUD program name under which the assistance is being requested. Recipients enter the HUD program name under which the assistance, that relates to the update report, was provided.

5. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

Note: In the case of Mortgage Insurance under 24 CFR Subtitle B, Chapter II, the mortgagor is responsible for making the applicant disclosures, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department. Update reports must be submitted directly to HUD by the mortgagor.

Note: In the case of the Project-Based Certificate program under 24 CFR Part 882, Subpart G, the owner is responsible for making the applicant disclosures, and the PHA is responsible for furnishing the owner's disclosures to HUD. Update reports must be submitted through the PHA by the owner.

B. Part II. Threshold Determinations — Applicants Only

Part II contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

1. The first question asks whether the applicant meets the Nature of Assistance and Dollar Threshold requirements set forth in Section I.C.1. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct, and to complete the next question.

2. The second question asks whether the application is for a specific housing project that involves other government assistance, as described in Section I.C.2. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct.

If the answer to both questions 1 and 2 is No, the applicant need not complete Parts III, IV, or V of the report, but must sign the certification at the end of the form.

C. Part III. Other Government Assistance.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports. Applicants must report any other government assistance involved in the project or activity for which assistance is sought. Recipients must report any other government assistance involved in the project or activity, to the extent required under Section I.D.1., 2., or 3., above.

Other government assistance is defined in note 5 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there is reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available. Include at least one organizational level below the agency name. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

2. Enter the program name and any relevant identifying numbers, or other means of identification, for the other government assistance.

3. State the type of other government assistance (e.g., loan, grant, loan insurance).

4. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).

If the applicant has no other government assistance to disclose, it must certify that this assertion is correct.

To avoid duplication, if there is other government assistance under this Part and Part V, the applicant/recipient should check the appropriate box in this Part and list the information in Part V, clearly designating which sources are other government assistance.

D. Part IV. Interested Parties.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

Applicants must provide information on:

(1) All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity; and

(2) Any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Recipients must make the additional disclosures refferred to in Section I.D.1.,2., or 4, above.

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses of all persons referred to in paragraph (1) or (2) of this Part. If the person is an entity, the listing must include the full name of each officer, director, and principal stockholder of the entity. All names must be listed alphabetically, and the names of individuals must be shown with their last names first.

2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.

3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).

4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

If the applicant has no persons with financial interests to disclose, it must certify that this assertion is correct.

5. Part V. Report on Sources and Uses of Funds. This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

The applicant disclosure report must specify all expected sources of funds — both from HUD and from any other source — that have been, or are to be, made available for the project or activity. Non-HUD sources of funds typically include (but are not limited to) other government assistance referred to in Part III, equity, and amounts from foundations and private contributions. The report must also specify all expected uses to which funds are to be put. All sources and uses of funds must be listed, if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the source or use will be forthcoming.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

General Instructions — sources of funds

Each reportable source of funds must indicate:

a. The name and address, city, State, and zip code of the individual or entity making the assistance available. At least one organizational level below the agency name should be included. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

b. The program name and any relevant identifying numbers, or other means of identification, for the assistance.

c. The type of assistance (e.g., loan, grant, loan insurance).

Specific instructions — sources of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each source of funds must indicate the total amount of approved, and received; and must be listed in descending order according to the amount indicated.

(2) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each source of funds must indicate the total amount of funds involved, and must be listed in descending order according to the amount indicated.

(3) If Tax Credits are involved, the report must indicate all syndication proceeds and equity involved.

General instructions—uses of funds.

Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, evevators, exterior masonry, etc.

Specific instructions -- uses of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each use of funds must indicate the total amount of funds involved; must be broken down by amount committed, budgeted, and planned; and must be listed in descending order according to the amount indicated.

(ii) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each use of funds must indicate the total amount of funds involved and must be listed in descending order according to the amount involved.

(iii) If any program administered by the Assistant Secretary for Housing-Federal Housing Commissioner is involved, the report must indicate all uses paid from HUD sources and other sources, including syndication proceeds. Uses paid should include the following amounts.

AMPO
Architect's fee — design
Architect's fee — supervision
Bond premium
Builder's general overhead
Builder's profit
Construction interest
Consultant fee
Contingency Reserve
Cost certification audit fee
FHA examination fee
FHA inspection fee

FHA MIP
Financing fee
FNMA / GNMA fee
General requirements
Insurance
Legal — construction
Legal — organization
Other fees
Purchase price
Supplemental management fund
Taxes
Title and recordingOperating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve
Total land improvement
Total structures

Uses paid from syndication must include the following amounts:

Additional acquisition price and expenses
Bridge loan interest
Development fee
Operating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve

Footnotes:

1. All citations are to 24 CFR Part 12, which was published in the Federal Register on March 14, 1991 at 56 Fed. Reg. 11032.
2. A list of the covered assistance programs can be found at 24 CFR §12.30, or in the rules or administrative instructions governing the program involved. Note: The list of covered programs will be updated perodically.
3. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).
4. See 24 CFR §§12.32 (a)(2) and (3) for detailed guidance on how the threshold is calculated.
5. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
6. For further guidance on this criterion, and for a list of covered programs, see 24 CFR §12.50.
7. For purposes of Part 12, a person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

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Thursday
January 16, 1992

Part III

Department of Health and Human Services

Office of the Secretary

45 CFR Part 96
Block Grant Programs; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 96

Block Grant Programs

AGENCY: Administration for Children and Families, HHS.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the regulations of the Department of Health and Human Services (HHS) governing the administration of block grant programs; this rule applies specifically to the low-income home energy assistance program (LIHEAP). The rule implements changes to the LIHEAP statute which were made by the Augustus F. Hawkins Human Services Reauthorization Act of 1990 (Pub. L. 101–501) and which affect grantee administration of the LIHEAP program in fiscal years 1991 and 1992. These changes involve the Department's response to formal complaints, reduction in the percent of LIHEAP funds that grantees may carry forward from one fiscal year to the next, waiver authority to increase the percent of LIHEAP funds that grantees may use for weatherization, a requirement for additional outreach and intake services under certain circumstances, and a leveraging incentive program.

DATES: *Effective Date:* This interim final rule is effective beginning January 16, 1992.

Comment Date: Before adopting final regulations, we will consider all comments we receive by March 16, 1992.

ADDRESSES: Send comments to: Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447.

The comments received in response to this interim final rule may be inspected or reviewed at the above address, Monday through Friday, between 9 a.m. and 5 p.m., beginning one week after the publication of this rule.

FOR FURTHER INFORMATION CONTACT: Janet M. Fox, 202–401–9351, or Ann Bowker, 202–401–5308.

SUPPLEMENTARY INFORMATION:

Waiver of Notice and Comment Procedures

The Augustus F. Hawkins Human Services Reauthorization Act of 1990, Public Law 101–501, was enacted on November 3, 1990. Title VII contains amendments to the Low-Income Home Energy Assistance Act of 1981 (title XXVI of Pub. L. 97–35), including several changes affecting LIHEAP grantee program administration for FY 1991 and FY 1992. These changes concern the Department's response to formal complaints, reduction in the maximum amount that grantees may carry forward from one fiscal year to the next, waiver authority to increase the statutory weatherization maximum, a requirement for additional outreach and intake services in certain cases, and a leveraging incentive program.

This amendment to the block grant regulations, which implements these statutory changes, is being published in interim final form. The Administrative Procedure Act (5 U.S.C. 553(b)(B)) provides that, if the Department for good cause finds that a notice of proposed rulemaking (NPRM) is unnecessary, impracticable, or contrary to public interest, it may dispense with the NPRM if it incorporates a brief statement in the interim final rule of the reasons for doing so.

The Department finds that there is good cause to dispense with an NPRM with respect to this amendment. We find that publication of this final rule in proposed form would be unnecessary and impracticable for the following reasons. First, it is important that grantees have timely notice of the rules for operating their LIHEAP programs consistent with these new statutory provisions. They must know as soon as possible the rules under which the changes effective in fiscal years 1991 and 1992 will be implemented, so that they can plan properly and adequately for implementation. Second, LIHEAP grantees and interested parties were notified by information memorandum of the opportunity to comment informally on these statutory changes. Further, during the development of this interim rule, we received 21 written comments and met with persons representing more than 15 entities or organizations who responded to the opportunity to comment. We considered these comments while drafting this interim rule. (These written comments, and summaries of these meetings, are available for public inspection and review along with comments received in response to this interim final rule.)

We also are interested in receiving formal comments on this interim final rule. We will review any comments which we receive by March 16, 1992. We will revise the rule, as appropriate, based on the comments we receive and on our experience in the first year of operation.

In addition to the statutory changes affecting LIHEAP program administration beginning in FY 1991 and FY 1992, Pub. L. 101–501 also includes several changes affecting LIHEAP program administration beginning in FY 1993 and FY 1994. These later changes concern forward funding and the end of authority to transfer LIHEAP funds to other HHS block grants. The Department anticipates publishing regulations to implement these changes later this fiscal year.

Section-by-Section Analysis of Changes in the Regulations

Subpart E—Enforcement

Section 96.50 Complaints

Section 708 of Public Law 101–501 amends section 2608(a)(2) of the LIHEAP statute, beginning in FY 1991. Section 2608(a)(2) concerns formal complaints of a substantial or serious nature that a grantee has failed to use funds in accordance with the LIHEAP statute. The new requirement sets a specific time period of 60 days within which the Department must respond, in writing, to complaints that are submitted to it under this provision.

The HHS block grant regulations currently provide at 45 CFR 96.50(d) that HHS "will provide a written response to complaints within 180 days after receipt." Also, section 96.50(c) provides that HHS will "promptly furnish a copy of any complaint" to the grantee against which the complaint was made and that, in responding to the complaint, HHS will consider any comments received from the grantee within 60 days, or a longer period agreed on by the grantee and HHS. Our experience has shown that, because of the serious—and generally complex—nature of the formal complaints we have received, grantees usually require a full 60 days to respond to complaints made against them.

Therefore, we are amending § 96.50(d) to state that, within 60 days after it receives a complaint concerning the low-income home energy assistance program, the Department will provide a written response to the complainant stating the actions it has taken to date and the timetable for final resolution of the complaint. We will continue to provide final resolution as soon as possible, consistent with our responsibility to provide the affected grantee sufficient opportunity to respond and to provide thorough Federal review of the pertinent facts, and we will continue to advise the complainant of the final action taken.

Subpart H—Low-Income Home Energy Assistance Program

Section 96.81 Reallotment Report

As part of the reallotment procedure established by section 2607(b) of the Low-Income Home Energy Assistance Act (title XXVI of Pub. L. 97–35, as amended), LIHEAP grantees must report information annually on funds they plan to hold available for obligation in the following fiscal year. Section 96.81 of the block regulations lists the requirements for these reports. We are amending section 96.81 to reflect a change made by section 706 of Public Law 101–501. This change reduces the maximum amount of LIHEAP funds that grantees may carry forward for obligation in the succeeding fiscal year, from 15 percent to 10 percent of the funds payable to the grantee and not transferred, pursuant to section 2604(f) of the LIHEAP statute, to another HHS block grant. This change is effective beginning with FY 1991 funds carried over to FY 1992.

Section 96.83 Increase in Maximum Amount That May Be Used for Weatherization and Other Energy-Related Home Repair

Section 705 of Public Law 101–501 amends section 2605(k) of the LIHEAP statute, beginning in FY 1991. It provides that grantees may request after March 31 of each fiscal year that the Department grant a waiver for the fiscal year that increases from 15 percent to up to 25 percent of the LIHEAP funds allotted or available to the grantee, the maximum amount of LIHEAP funds the grantee may use for low-cost residential weatherization or other energy-related home repair. Grantees that choose to apply for a waiver may request authority to use for these purposes any amount between 15 percent and 25 percent of their LIHEAP funds.

We are adding a new section 96.83 to the block grant regulations to implement procedures for requesting waivers of the statutory weatherization maximum.

"Standard" and "Good Cause" Waivers

The statute provides that, after reviewing a grantee's waiver request and any public comments, the Department may grant a waiver if it determines that: (1) The number of households in the grantee's service population that will receive LIHEAP heating, cooling, and crisis assistance (energy crisis intervention) benefits during the fiscal year will not be fewer than the number that received such benefits in the preceding fiscal year; (2) the aggregate amount of LIHEAP benefits that will be received during the fiscal year will not be less than the aggregate amount received in the preceding fiscal year; and (3) the weatherization activities have been demonstrated to produce measurable savings in energy expenditures. The statute also provides that the Department may grant a waiver if, in accordance with regulations to be published by the Department, the grantee's waiver request demonstrates good cause for failing to satisfy the requirements in the preceding sentence.

The waiver criterion requiring that the number of households in the grantee's service population that will receive LIHEAP heating, cooling, and crisis assistance benefits will not be fewer than the number that received such benefits in the preceding fiscal year applies to the total, combined, aggregate number of households receiving these types of benefits in each fiscal year. Grantees are to use their best estimates for each fiscal year of (1) the total or combined number of all households receiving each of these types of assistance (which may involve some duplication, e.g., counting a household twice if it received both regular heating assistance and heating crisis assistance); or (2) the unduplicated number of households receiving heating assistance and heating crisis assistance plus the unduplicated number of households receiving cooling assistance and cooling crisis assistance. Grantees must use the same method of calculation for both fiscal years. Numbers for the earlier fiscal year should be consistent with the numbers included in the grantee's official report of the number and income levels of households it assisted during that year (as required by 45 CFR 96.82) or with a revised report.

The criterion requiring that the aggregate amount of LIHEAP benefits will not be less than the aggregate amount of LIHEAP benefits received in the preceding fiscal year applies to the total, combined, aggregate amount, in dollars, of LIHEAP heating, cooling, and crisis assistance benefits in each fiscal year—not to the separate totals for each type of assistance.

Grantees will need to project figures for any households to be served and funds to be obligated from the date the waiver request is submitted until the end of the fiscal year for which the waiver is requested.

The criterion requiring that the weatherization activities have been shown to produce measurable savings in energy expenditures applies to all LIHEAP weatherization activities to be carried out by the grantee during the fiscal year for which the waiver is requested, not just to activities proposed to be carried out with amounts above 15 percent of the grantee's LIHEAP funds. Grantees will not meet this criterion unless all of their LIHEAP weatherization activities for the fiscal year have been shown to produce measurable savings.

The LIHEAP statute and the HHS block grant regulations do not name specific activities which are allowable as weatherization and other energy-related home repair under the LIHEAP program. However, the statute and Federal regulations for the low-income weatherization assistance program (LIWAP) administered by the Department of Energy (DOE) do name certain weatherization measures that are allowable under that program. The statute authorizing LIWAP is the Energy Conservation in Existing Buildings Act of 1976 (title IV of the Energy Conservation and Production Act, Pub. L. 94–385, as amended; 42 U.S.C. 6851 *et seq.*). The final rule implementing DOE's Weatherization Assistance for Low-Income Persons is found at 10 CFR 440. These Federal regulations include "Standards for Weatherization Materials" at appendix A. In addition, DOE has allowed other activities by correspondence or memorandum.

The DOE weatherization statute and regulations apply specifically to LIWAP, and the LIHEAP statute and regulations apply to LIHEAP. However, to promote consistency in their weatherization programs, LIHEAP grantees may choose to use certain DOE weatherization provisions as guidance in administering their LIHEAP weatherization programs, as long as these provisions are consistent with the LIHEAP statute and regulations.

HHS will accept the following as weatherization activities which have been shown to produce measurable savings in energy expenditures, as long as these activities also are consistent with the requirements of the LIHEAP statute and regulations: Installation of the specific materials meeting the specific standards listed in Appendix A of the DOE weatherization regulations at 10 CFR 440; installation of materials meeting the specific standards incorporated by reference in Appendix A; and weatherization activities specifically allowed by official DOE correspondence and memoranda. LIHEAP grantees requesting a waiver of the LIHEAP statutory weatherization maximum who propose to carry out these weatherization activities may cite these sources as the criteria under which they have determined that these activities have been shown to produce measurable savings.

In addition to listing requirements for a "standard" weatherization waiver for grantees that meet the three statutory criteria discussed above, this rule sets criteria for a "good cause" waiver for grantees that wish to use more than 15 percent of their LIHEAP funds for weatherization, but do not meet one or more of the three criteria for a "standard" waiver.

Requests for both "standard" and "good cause" waivers must include comparison of the grantee's best estimates of service and benefit totals for the year for which the waiver is requested with service and benefit totals for the preceding fiscal year. The criteria for a "good cause" waiver include the requirements that grantees explain the reasons they are not maintaining the prior year's service levels, document good cause for failing to maintain these levels, and justify proposing to use additional funds for weatherization. Reasons for failing to maintain service levels might include reduction in need and/or fewer applications for assistance due to improvement in economic conditions and decline in unemployment, warmer than normal winter weather, and/or lower home energy prices and/or costs or expenditures for low-income households. We also will consider arguments and documentation (e.g., cost benefit analysis) that greater benefits will accrue to recipients from use of funds for weatherization than for cash assistance. Further, we will consider arguments that service or benefit levels were higher in the preceding year because of supplemental appropriations enacted in response to unusual conditions, such as the $195 million contingency fund enacted in FY 1991 to deal with unexpected fuel price increases resulting from the Middle East crisis.

In addition, "good cause" waiver requests must include a comparison of the eligibility standards and benefit levels for the fiscal year of the waiver request and the preceding fiscal year, along with an explanation, if appropriate, of why the eligibility standards were lower or the benefit levels were higher in the preceding year. We will review this information to determine whether a waiver would be consistent with congressional intent to maintain benefit and service levels.

"Good cause" documentation should cite measurable, quantified data, and the sources for these data. For example, grantees documenting reduction in need for cash benefits may provide comparison of unemployment statistics, Aid to Families with Dependent Children (AFDC) and other public assistance recipiency data, and the number of applications for LIHEAP assistance, for the current and the preceding fiscal year. Grantees documenting milder weather may cite National Weather Service data comparing heating or cooling degree days for their service area, as appropriate. Grantees documenting decreased home energy prices or costs may specify prices or costs to low-income households, using data from energy vendors or the Department of Energy, for example.

Public Comment

Consistent with the requirements and legislative history of Public Law 101–501, we are requiring that grantees provide opportunity for timely and meaningful public review of, and comment on, their proposed weatherization waiver requests. (Consistent with the conference report on the enrolled bill, published as House of Representatives Conference Report 101–816, this public comment procedure does not require hearings.) We expect grantees to provide notification of waiver requests with sufficient lead time to allow interested parties a reasonable period in which to comment. We also expect grantees to indicate that a LIHEAP weatherization waiver request is the specific topic of a meeting or request for comments, rather than simply indicating that issues of general social services interest are involved. We are requiring that grantees include with their waiver requests a description of how and when the proposed waiver request was made available for timely and meaningful public review and comment, copies or summaries of public comments received, a statement of the method for reviewing public comments, and a statement of the changes, if any, that were made in response to these comments.

Submission and Review of Waiver Requests

Requests for waiver of the weatherization maximum must be made by the grantee's chief executive officer or designee, in writing. They should be sent to the Director, Office of Community Services, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447.

The Department may require additional clarification or documentation as it determines necessary to decide whether a grantee fully satisfies the appropriate waiver requirements.

The Department will review all requests and make a decision within a maximum of 45 days of receipt of a completed request. We expect that most requests will be handled much more quickly than this, but a need for additional information from the grantee could delay the time period.

The Department will approve all waiver requests that, in its judgment, meet all statutory and regulatory requirements for either a "standard" or "good cause" waiver and that demonstrate adequate solicitation and consideration of public comments.

No waivers will be granted after the end of the fiscal year for which the funds are appropriated. Accordingly, waiver requests must be submitted in sufficient time before the end of the fiscal year to allow for Departmental review and grantee obligation of funds that cannot be carried forward.

As noted, the LIHEAP statute specifies that waiver requests are to be submitted after March 31 each fiscal year. This is clearly an appropriate submission date while LIHEAP is administered on the basis of the Federal fiscal year of October 1 through September 30. Six months remain in the fiscal year after March 31, leaving adequate time for HHS to review requests and for grantees to obligate the funds for approved weatherization activities. However, this date may not be appropriate once forward funding, with a program year of July 1 through June 30, begins. Only three months will remain in the program year after March 31 to allow for Departmental review of waiver requests and grantee obligation of those waiver funds that cannot be carried forward. We are interested in comments about whether this date would create problems for administration of grantee programs under forward funding.

Effective Period

Waivers will be effective from the date of the Department's written approval until the funds are obligated in accordance with the LIHEAP statute and regulations.

A grantee that has received a waiver is not required to use the full approved amount for weatherization. If a grantee decides to use less than the approved amount for weatherization, it should amend its LIHEAP plan to reflect this decision.

Funds for which a weatherization waiver is granted may be carried over to the following year, consistent with standard statutory and regulatory requirements for obligation and carryover of LIHEAP funds, and may

retain their designation as funds to be used for weatherization, if the grantee so chooses. However, any carried-forward "waiver funds" that retain this designation may not be considered "funds available" or "funds allotted" for the purpose of calculating the maximum amount that may be used for weatherization in the succeeding fiscal year.

Section 96.84 Miscellaneous

We are amending § 96.84, which formerly contained only a brief provision relating to rights and responsibilities of territories. The revised section includes this provision, as well as a brief provision (formerly section 96.86) concerning applicability of the LIHEAP statutory assurances, and a brief provision (formerly section 96.87) concerning prevention of waste, fraud, and abuse in grantee LIHEAP programs.

We are not changing the substance of these provisions. However, we are amending the provision dealing with applicability of the assurances to indicate that the new assurance 15, discussed below, which was added to the LIHEAP statute as section 2605(b)(15) by Public Law 101–501, applies to heating, cooling, and energy crisis intervention assistance.

We are consolidating these three regulatory provisions in section 96.84 due to space limitations in the LIHEAP portion of the block grant regulations.

Section 96.86 Exemption From Requirement for Additional Outreach and Intake Services

Section 704(a)(4) of Public Law 101–501 adds an additional LIHEAP statutory assurance—assurance 15—to which States must certify in their applications for LIHEAP funding. Under the new section 2605(b)(15), beginning in FY 1992, States that provide outreach and intake for heating and cooling assistance and crisis situations through State departments of public welfare at the local level also must provide outreach and intake for these types of assistance through additional State and local governmental entities or community-based organizations. Examples of community-based organizations listed in the statute are not-for-profit neighborhood-based organizations, area agencies on aging, and community action agencies. In States where such organizations do not administer these functions as of September 30, 1991, preference in awarding grants or contracts for intake services is to be provided to agencies that administer the low-income weatherization or energy crisis intervention programs.

Exemption of Indian-Tribes, Tribal Organizations, and Some Territories

While the new section 2605(b)(15) clearly applies to the States (including the District of Columbia), we believe that it is not relevant to Indian tribes and tribal organizations. In addition, we believe that it would not be appropriate to apply it to territories that receive relatively small LIHEAP allotments.

We have concluded that the new provision concerning alternate outreach and intake services is not appropriate to tribal grantees because of the nature of American Indian tribal governments and their relationship to their service populations. Assurance 15 refers to outreach and intake services "offered by State Departments of Public Welfare at the local level"—that is, entities that administer public welfare programs. The legislative history for Public Law 101–501 refers specifically to agencies that administer the Aid to Families With Dependent Children (AFDC) program. However, Indian tribes do not administer AFDC for their service populations. In accordance with Federal law and regulations, States provide AFDC assistance to eligible American Indians, including Indian people receiving LIHEAP assistance from tribes that receive direct LIHEAP funding. Indian tribes therefore do not have tribal departments or offices directly comparable to State departments of public welfare.

As we noted in the preamble to the block grant regulations as originally published on July 6, 1982 (47 FR 29480). Indian tribes are close to their service populations. "Tribal" and "local" levels of administration are generally the same. Consistent with the Federal government's policy of Indian self-determination, we are exempting tribal LIHEAP grantees from the provision at section 2605(b)(15) of the statute.

We also have concluded that the new provision concerning alternate outreach and intake services is not appropriate to territories with annual LIHEAP allotments of $200,000 or less. (The $200,000 figure applies to each territory's regular LIHEAP allotment for a fiscal year and excludes any leveraging incentive funds received by the territory.) Experience has shown that each grantee incurs certain basic administrative costs in developing and implementing a LIHEAP program. Most tribes and territories receive relatively small LIHEAP allotments. Therefore, by regulation of October 13, 1987 (52 FR 37957–37968), we modified the LIHEAP statutory limitation on planning and administrative expenditures for tribal and territorial grantees, because the flat 10 percent limitation may not be sufficient to cover the basic costs of developing and implementing their LIHEAP programs. Similarly, we have concluded that, for territorial grantees with annual LIHEAP funding of $200,000 or less, the additional resources that would be required to provide alternative outreach and intake services would increase administrative and other non-benefit costs prohibitively. As we noted in the preamble to the regulation of October 13, 1987, the term "outreach" encompasses some activities that are administrative and others that are not. However, whether an "outreach" activity is properly categorized as administrative or not, the expense of providing such additional activities would significantly reduce the heating, cooling, crisis, and/or weatherization benefits that the territory could provide. We doubt that territories with LIHEAP allotments of $200,000 or less would have the ability to provide meaningful LIHEAP benefit levels if they also were required to provide for additional outreach and intake services. The time, effort, and funds spent providing alternate outreach and intake services would be significantly out of proportion to the direct LIHEAP benefits that could be provided to eligible households.

In addition, the territories with current LIHEAP allotments of $200,000 or less that do not consolidate LIHEAP funds under other programs pursuant to Public Law 95–134, commonly referred to as the Omnibus Territories Act, administer LIHEAP entirely at the central territorial level. Because of their relatively small populations, they do not have separate local administering agencies. A requirement for alternative local agencies is not appropriate under these circumstances.

Pragmatically, this means that at current LIHEAP funding levels, all territories except the Commonwealth of Puerto Rico would be exempt from this provision. The allotments of the territories in FY 1991, under the regular LIHEAP appropriation of $1.415 billion, ranged from $14,965 to $68,038 for all territories except Puerto Rico, whose allotment was $1,711,284.

LIHEAP tribal grantees, and territorial grantees with annual LIHEAP allotments of $200,000 or less, should, on an on-going basis, take appropriate steps to assure that they provide optimum outreach and intake services under their LIHEAP programs. All grantees are subject to the requirements in assurance 3—section 2605(b)(3) of the LIHEAP statute—concerning outreach.

We are adding a new § 96.86 to the block grant regulations to exempt Indian

tribes and tribal organizations, and territories with an annual LIHEAP allotment of $200,000 or less, from the requirement of section 2605(b)(15) of the LIHEAP statute, as amended. This new § 96.86, "Exemption from requirement for additional outreach and intake services," replaces the former § 96.86, "State plans," whose content we are transferring to § 96.84.

Guidance Regarding Additional Services

As the original block grant regulations and preamble explain, consistent with statements of congressional intent, the Department's philosophy on block grants is that grantees are to be given as much flexibility as possible to implement the programs in their own jurisdictions. We will accept a grantee's interpretation of a statutory requirement unless the interpretation is clearly erroneous.

Grantees have requested guidance on interpretations and implementation of the requirement for additional outreach and intake services. Also, Senate Report 101–421 states that HHS is expected to provide guidance on compliance with this requirement. In response, we are providing the guidance in the paragraphs that follow.

We will review the grantees' compliance with the appropriate legislative and regulatory requirements in carrying out our responsibilities to conduct LIHEAP compliance reviews, application reviews, complaint investigations, and resolution of audit findings. However, consistent with the block grant philosophy, we are not publishing Federal rules on how the requirement for additional outreach and intake services must be implemented by grantees, except to specify that it does not apply to Indian tribes and tribal organizations or to territories receiving $200,000 or less in annual LIHEAP allotments. This is also consistent with our regulatory treatment of other application assurances required by the statute.

The requirement for additional outreach and intake services applies to States (including the District of Columbia) and to any territory with a LIHEAP allotment larger than $200,000 for the fiscal year in question, when the only agencies in all or part of the State or territory that provide outreach and intake for heating, cooling, and/or crisis assistance are local offices of the grantee department or agency that administers AFDC or the territorial equivalent basic cash public assistance program(s). The requirement applies in these cases whether or not that department or agency is named "State Department of Public Welfare" or "Department of Public Welfare." Also, when that department or agency is the only agency providing these outreach and intake services, the requirement applies whether or not the department or agency provides some of these services outside its own offices. (Section 2605(b)(15) requires that grantees "provide, in addition to such services as may be offered by State Departments of Public Welfare at the local level, outreach and intake functions for crisis situations and heating and cooling assistance that is administered by additional State and local governmental entities or community-based organizations * * *." The provision does not refer to the locations where the welfare department provides services.)

If grantees are already offering alternative services in some areas, they are not required to modify their system in these areas. Consistent with Conference Report 101–816, grantees are required to offer additional outreach and intake services only in areas where these services currently are provided solely by State or territorial departments of public welfare at the local level. In these areas, consistent with Senate Report 101–421 on H.R. 4151, the predecessor to Public Law 101–501, "a reasonable share" of outreach and intake functions is to be administered through alternative agencies, assuring that, to the extent possible, all eligible households in the grantee's service population will have viable access to alternative service sites. However, consistent with this Senate report, if the grantee finds no alternative in an area or areas after engaging in an open solicitation process, the grantee is not required to create new entities.

Also consistent with the Senate report, if such services previously were provided voluntarily, providers should continue to maintain comparable levels of effort voluntarily. The new requirement should not be used as a basis for reducing voluntary efforts. Consistent with the legislative history, we encourage the voluntary participation of utilities and other home energy vendors, churches, and other community groups and organizations, in outreach activities. Such entities often have excellent knowledge of and access to low-income households who may need LIHEAP assistance.

In order to meet the requirement for alternative outreach and intake services, the statute specifies that the alternate service providers must be State or local governmental entities or community-based organizations. Senate Report 101–421 mentions public or nonprofit agencies including other State or local government agencies, and community-based organizations such as community action agencies and aging organizations.

The Senate report emphasizes the importance of providing sufficient access to the LIHEAP program to the non-welfare poor and the elderly, through additional outreach efforts and appropriate intake locations. Grantees should provide varied outreach efforts targeted to the different populations eligible for LIHEAP assistance. Further, grantees should consult with low-income individuals and other interested parties to determine the best ways to implement the requirement for additional outreach and intake services.

"Intake" generally includes receipt of applications for assistance and the opportunity for applicants to provide any missing information that is needed to complete their applications. Each grantee has the discretion to choose whether to include income determination and verification responsibilities, and preliminary eligibility or benefit determination, as "intake." The conference report states that the "conferees believe that intake or application processing" is "best provided by experienced service providers with approved federal and state grant management systems."

If a system of mail-in applications carried out by a welfare department is used for a grantee's hearing and/or cooling assistance programs, and if it is not necessary to designate local administering agencies to carry out intake for these components, then there is no need under section 2605(b)(15) to designate other State and local governmental entities or community-based organizations to carry out intake for these components. In such a case, the grantee should assure that help is available to households that are unable to prepare and/or mail their applications without such assistance.

Section 2604(c) of the LIHEAP statute requires each entity that administers energy crisis assistance "to accept applications for energy crisis benefits at sites that are geographically accessible to all households in the area to be served" by the entity and to provide to physically-infirm low-income persons the means to submit applications for energy crisis benefits without leaving their residences or to provide the means to travel to the sites at which the entity accepts applications. The statute thus requires that there be energy crisis intake services at the local level. Therefore, intake for crisis assistance provided solely by welfare departments will not satisfy the requirement in section 2605(b)(15) concerning

additional intake services at the local level.

It is our experience that outreach normally is provided through local administering agencies, and therefore additional outreach services would be necessary if outreach currently is provided at the local level only through the welfare department.

In enacting the requirement that additional outreach and intake services be provided in certain cases, Congress has emphasized the importance of adequate and appropriate outreach and intake functions in grantee LIHEAP programs. Congress also has specifically limited the amount of Federal funds that can be used for costs of LIHEAP administration and planning to 10 percent of the funds payable to a State and not transferred to another HHS block grant program (section 2605(b)(9) of the LIHEAP statute). (As noted earlier, the block grant regulations provide for somewhat higher administrative cost limits for Indian tribes, tribal organizations, and territories.) As we stated in the preamble to the block grant regulations of July 6, 1982, "The consistent imposition of limits upon administrative expenditures under the various block grants is indicative of congressional intent that States devote a very high percentage of their block grant funds to direct payments or services" (47 FR 29477). Grantees should make every effort to provide the maximum amount of direct LIHEAP assistance to low-income households, consistent with the provision of adequate support services.

Although grantees subject to the new requirement may categorize some of their additional outreach expenses as non-administrative, many of the additional costs will be administrative. Some grantees may have difficulty providing additional outreach and intake services and remaining within the statutory limitation on use of Federal funds for costs of LIHEAP planning and administration. These grantees, in particular, may need to examine all of their LIHEAP activities and costs to determine ways to increase efficiency, to encourage voluntary efforts, and to use their own funds to supplement Federal LIHEAP funds. HHS does not have authority to waive the statutory limitation on administrative costs. The requirement for additional outreach and intake services does not relieve grantees of the need to comply with this statutory limitation. The conference report indicates that the conferees "recognize the potential for significantly increased administrative expenses for some states to comply with the new alternative site requirements, and intend to monitor possible effects on the program and recipients."

Section 96.87 Leveraging Incentive Program

Section 707 of Public Law 101–501 adds a new section 2607A to the LIHEAP statute, establishing a leveraging incentive program, and amends section 2602 of the LIHEAP statute, authorizing funds for this program. We are adding a new § 96.87 to the block grant regulations to implement this new program. The new § 96.87, "Leveraging incentive program," replaces the former § 96.87, "Prevention of waste, fraud, and abuse," whose content we are transferring to § 96.84.

Under the leveraging incentive program, beginning in FY 1992, HHS may allocate supplementary LIHEAP funds to grantees that have acquired non-Federal leveraged resources for low-income households. These leveraging incentive funds are for those grantees that use their own or other non-Federal resources to expand the effect of the Federal LIHEAP dollars.

Section 2607A defines leveraged resources as benefits made available to the grantee's LIHEAP program or to low-income households that are federally qualified (federally eligible) for LIHEAP that: (1) Represent a net addition to the total energy resources available to State and federally qualified low-income households in excess of the amount of energy resources that these households could acquire by purchasing energy at commonly available household rates; and (2) result from acquisition or development by the grantee's LIHEAP program of quantifiable benefits obtained from energy vendors through negotiation, regulation, or competitive bid; or are appropriated or mandated by the grantee for distribution through its LIHEAP program; or are appropriated or mandated by the grantee for distribution under its LIHEAP plan to federally qualified low-income households and the benefits are determined by the Department to be integrated with the grantee's LIHEAP program.

Senate Report 101–421 on H.R. 4151, the predecessor to Public Law 101–501, notes that, "if the LIHEAP program uses its purchasing power (or 'leverage') to acquire the full economic value of its resources, it can acquire substantial additional energy assistance resources and services for the poor from state energy market sources." This report lists the following examples of leveraged resources: "state-appropriated funds, quantifiable payments, discounts, credits, energy conservation improvements or other measurable benefits to eligible households in excess of the energy that could be purchased by the LIHEAP program at commonly available residential rates."

Under the statutory terms, grantees desiring leveraging incentive funds must submit a report to HHS by July 31 of each year that quantifies the amount of leveraging accomplished by the grantee that year, less any costs incurred by the grantee to leverage such resources and any costs imposed on federally eligible households. Leveraging incentive funds will be awarded for use in the following fiscal year or program year (e.g., leveraging activities in FY 1991 will be the basis for making leveraging incentive grant awards in FY 1992). Section 2607A of the LIHEAP statute requires that grantees use leveraging incentive funds awarded to them only "for increasing or maintaining benefits to households."

Consistent with the requirements of section 2607A, this interim final rule includes requirements for countable leveraged resources and for calculation and documentation of the value of leveraged resources, submission of leveraging reports to HHS, calculation of grantee shares of leveraging incentive funds, and use of leveraging incentive funds.

Entities Eligible for Leveraging Incentive Funds

States (including the District of Columbia), Indian tribes, tribal organizations, and territories may participate in the leveraging incentive program. In order to apply for and receive leveraging incentive funds, grantees must receive regular LIHEAP block grant funding directly from HHS in both the "base" year for which their leveraging activities are reported and the "award" year for which leveraging incentive funds are requested. Grantees are not required to participate in this program. However, whether or not they choose to request leveraging incentive funds, grantees are encouraged to leverage additional resources to supplement their Federal LIHEAP funds.

LIHEAP Funds Used To Develop Leveraging Programs

Section 2607A provides that, each fiscal year, States may spend up to the greater of $35,000 or 0.0008 percent of their funds allocated under the LIHEAP statute to identify, develop, and demonstrate leveraging programs. Since 0.0008 percent of the largest FY 1991 State LIHEAP allotment is approximately $1,700, clearly $35,000 is the larger in all cases, and $35,000 would be the larger under all foreseeable

LIHEAP appropriation levels. Therefore, if the language is carried out as written, the result would appear to be illogical and inconsistent with reason. We therefore conclude that the figure 0.0008 percent results from a typographical error and that 0.0008 was intended to be the actual factor by which the State's allotment is multiplied, rather than the percent (i.e., when calculating 0.08 percent of a State's allotment, one multiplies the allotment by the factor 0.0008). By regulation, we are clarifying that the figure is 0.08 percent. This interpretation provides a meaningful result, since 0.08 percent of the FY 1991 State LIHEAP allotments ranges from approximately $1,200 for the State with the smallest allotment to $170,000 for the State with the largest allotment; $35,000 is the larger in some cases, and 0.08 percent is the larger in other cases.

However, $35,000 would be a disproportionate amount for most tribes, tribal organizations, and territories to spend annually to identify, develop, and demonstrate leveraging programs. (FY 1991 tribal allotments ranged from approximately $1,100 to $1,038,000; the allotments of 84 of the 115 tribal grantees were under $100,000. FY 1991 territorial allotments ranged from approximately $15,000 to $1,711,000; the allotments of five of the six territorial grantees were under $100,000.) Therefore, by regulation, we are limiting to two percent of their annual LIHEAP allotments the amount that these grantees may spend each fiscal year for these purposes. This is approximately the same percent as the territory with the largest allotment would have spent if it had used $35,000 of its FY 1991 allotment for these purposes ($35,000 divided by $1,711,284 equals 0.0204524 or 2.04524 percent).

The 0.08 percent maximum for States, and the two percent maximum for tribes, tribal organizations, and territories, apply to these grantees' funds allocated under the LIHEAP statute. For the purpose of this provision, we define this, by regulation, to mean the grantees' Federal LIHEAP allotments, including any supplemental funds except leveraging incentive funds received by the grantee. (Also, grantees may spend additional monies from their own funds or other non-Federal sources.)

LIHEAP block grant funds that are used to identify, develop, and demonstrate leveraging programs are likely to support both planning and administrative activities and costs, and program (non-planning, non-administrative) activities and costs. Although these funds are regularly appropriated LIHEAP funds, we have decided that they are not subject to the LIHEAP statute's limitation on the maximum percent of Federal funds that grantees may use for costs of planning and administration. We have so stated in this interim rule. We believe that, if these funds were subject to the limitation, it would be a disincentive to grantees to develop leveraging programs. However, Congress established the leveraging incentive program to encourage—to provide an incentive to—grantees to leverage funds. We therefore conclude that LIHEAP funds should be available in addition to the regular LIHEAP planning and administration limits, to identify, develop, and demonstrate leveraging programs.

Basic Requirements for Leveraged Resources

Consistent with the block grant legislation and legislative history, the Department's policy generally is to provide maximum flexibility to grantees to operate their LIHEAP programs; grantees are the primary interpreters of the LIHEAP statute. However, grantees will be applying "competitively" for shares of a limited amount of leveraging incentive funds. Shares will be determined based on reports submitted by grantees to the Department which list and quantify the value of the resources they have leveraged. It is therefore necessary that all grantees applying for leveraging incentive funds use the same assumptions and rules. There must be standard criteria and methods for determining the activities which may be included as leveraging under this program and for quantifying the value of these activities.

In this interim rule, we have tried to make these criteria and methods as clear as possible, while leaving opportunity for grantees to include leveraged resources that we did not anticipate—as long as these resources meet the requirements for leveraged resources specified in the LIHEAP statute and implemented through these regulations. Grantees' experience, and our experience, during the first cycle of the leveraging incentive program, and comments submitted to us on this interim rule, will help us determine any changes which should be made in the final rule.

We believe it is reasonable to define the term "energy," as used in section 2607A, the same as the term "home energy," which is defined in section 2603(3) of the LIHEAP statute as "a source of heating or cooling in residential dwellings." The authorizing language in section 2602(a) of the LIHEAP statute specifies that the purpose of the LIHEAP program is to assist eligible households to meet the costs of home energy. The leveraging incentive program is authorized by the same statute and is to be supported by and coordinated with the LIHEAP program. Consistent with the language authorizing the LIHEAP program, the LIHEAP leveraging incentive program logically should address the same purpose and needs.

As part of the statutory requirements for leveraged resources, section 2607A(b)(1) states that countable leveraged resources or benefits must "represent a net addition to the total energy resources available to State and federally qualified households in excess of the amount of such resources that could be acquired by such households through the purchase of energy at commonly available household rates." This language could be interpreted to limit countable leveraged resources to energy credits and fuels purchased at discounted prices—to mean, for example, that a grantee could not count leveraged donated funds used to pay low-income households' actual fuel costs at normal rates, because there would be no net addition to the resources these households could acquire at "commonly available household rates," or that a grantee could not count tangible non-fuel items purchased at discounted prices. We did not adopt this narrow interpretation. The purpose of this provision is to encourage grantee efforts which result in additional home energy resources for low-income households. Therefore, consistent with this basic purpose, we believe that the best reading of the provision would allow a more expansive interpretation. We therefore have clarified the language to state that countable leveraged resources and benefits must "represent a net addition to the total home energy resources available to low-income households in excess of the amount of such resources that could be acquired by these households through the purchase of home energy, or the purchase of items that help these households meet the cost of home energy, at commonly available household rates or costs, or that could be obtained with regular LIHEAP allotments provided under section 2602(b) of Public Law 97–35 * * *."

Public Law 101–501 and its legislative history set requirements concerning the degree to which leveraging activities must be coordinated or integrated with grantees' LIHEAP programs. Leveraging activities that do not meet these requirements cannot be included in the program authorized under section 2607A

of the LIHEAP statute, as established by Public Law 101–501.

As part of the statutory requirements for leveraged resources, section 2607A(b)(2) mandates that leveraged resources or benefits meet least one of the following three criteria: (1) They "result from the acquisition or development by the State program of quantifiable benefits that are obtained from energy vendors through negotiation, regulation or competitive bid"; or (2) they "are appropriated or mandated by the State for distribution * * * through the State program"; or (3) they "are appropriated or mandated by the State for distribution * * * under the plan referred to in section 2605(c)(1)(A) to federally qualified low-income households and such benefits are determined by the Secretary to be integrated with the State program."

The first criterion refers to the role of the grantee's LIHEAP program in the acquisition or development of benefits obtained from energy vendors. Based on the discretion in the statute, we define the phrase "acquisition or development by the State program" to mean that the grantee's LIHEAP program must have substantial involvement in the acquisition or development of these benefits. The involvement of the grantee's LIHEAP program must be considerable, important, material, and of real value or effect.

We define the second criterion to mean that the leveraged resources and benefits must be provided to low-income households as a part of (through or within) the grantee's LIHEAP program, consistent with the Federal statutes and regulations applicable to the LIHEAP program.

The plan referred to in the third criterion is a part of each grantee's annual application for regular LIHEAP funds; in the plan, the grantee describes how it will carry out statutory assurances to which its chief executive officer has certified and includes other information required by statute. Based on the context in which it appears, we define the phrase, "appropriated or mandated by the State for distribution * * * under the plan * * *", to mean that the leveraged resources and benefits must be identified and described in the plan and distributed as indicated in the plan, but the leveraged benefits are not provided to low-income households as a part of (through or within) the grantee's LIHEAP program. They must be provided to federally eligible low-income households as a supplement or an alternative to the grantee's LIHEAP program. (For example, an alternative would be a fuel fund with maximum income eligibility of 150 percent of the poverty level, to which a grantee's LIHEAP program with maximum income eligibility of 125 percent of the poverty level refers households with incomes between 125 percent and 150 percent of the poverty level.) The leveraged benefits must be provided to eligible households referred by the grantee's LIHEAP program as long as funds are available. The plan's description of these leveraged resources and benefits must be made available for public comment by the grantee, and they must, in effect, be sanctioned in the plan. Grantees may amend their plans to include such resources at any time during the base period—the year in which the resources are provided to low-income households. However, grantees may not amend their plans to include such resources after the end of this period.

The third criterion also requires that the leveraged benefits be "integrated with the State program." We define this to mean that the benefits must be coordinated with the grantee's LIHEAP program, and must be provided in cooperation and in conjunction with the LIHEAP program.

The first and third criteria allow the counting of leveraged benefits that are provided to households with incomes up to the Federal maximum and to categorically eligible households, as described in section 2605(b)(2) of the LIHEAP statute, whether or not the grantee's LIHEAP program has more restrictive eligibility standards. Under the second criterion, leveraged benefits must be provided "through" the grantee's LIHEAP program, to households eligible under the grantee's standards.

Leveraged resources that are provided to households that do not meet the eligibility requirements in section 2605(b)(2) cannot be counted under the leveraging incentive program. If a leveraging program provides benefits to both federally eligible and non-federally eligible households, the grantee should report only the benefits for households that are federally eligible. In accordance with this provision, federally eligible (federally qualified) "low-income households" are:

- Households with incomes that do not exceed the greater of 150 percent of the poverty level for their State, or 60 percent of State median income; and
- Households in which one or more individuals receive Aid to Families with Dependent Children, Supplemental Security Income payments, food stamps, or certain need-tested veterans' and survivors' payments (i.e., payments under sections 415, 521, 541, or 542 of title 38 of the U.S. Code or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978).

The LIHEAP statute allows grantees to set eligibility standards that are more restrictive than the maximums, listed above, that are set by the statute. State eligible (State qualified) households are households that meet the eligibility requirements for a State's LIHEAP program. The LIHEAP statute permits grantees to set their LIHEAP program's income eligibility standard as low as 110 percent of the poverty level. The statute also permits grantees to decide whether to provide categorical eligibility for their LIHEAP program and, if so, to decide which of the programs listed above to include.

We are not requiring that leveraging activities be "new" ones in order to be countable under the leveraging incentive program. We do not want to encourage grantees to stop leveraging activities that are beneficial in order to start new activities that may or may not be beneficial. However, existing leveraging efforts do not automatically qualify as leveraged resources under the leveraging incentive program. We will count leveraging activities that are ongoing, as long as they meet the requirements of the statute and these regulations, and the counted leveraged benefits are provided to low-income households during the base period. For example, as long as the stated requirements for leveraging are met, the amount of reduction in home energy bills resulting from reduced rates for low-income households occurring in the base period may be counted whether or not the initial reduction was made during this period. Similarly, as long as the stated requirements for leveraging are met, benefits provided to low-income households during the base period by fuel funds may be counted whether or not the fund began operation during this period.

Leveraged Resources That Can Be Counted

Resources and benefits that are countable under the leveraging incentive program include certain cash resources, home energy discounts and credits, and third-party in-kind contributions. Countable resources and benefits include but are not limited to the following, as long as they also meet all other applicable requirements. Cash: State, tribal, territorial, and other public and private non-Federal funds, including payments from private fuel funds that meet all applicable statutory and regulatory requirements for leveraged resources, and including certain petroleum violation escrow funds (as

discussed later in this preamble), used for:

- Heating, cooling, and energy crisis assistance benefits, including payments toward recipient households' home energy costs;
- Payments toward recipient households' costs of weatherization and other energy-related home repair (hereafter referred to as weatherization);
- Purchase and delivery of fuels used by recipient households for home energy;
- Purchase, delivery, and installation of weatherization materials;
- Purchase and delivery of blankets, space heating devices and equipment (including furnaces), and space cooling devices and equipment (including fans and air conditioners) that are provided to low-income households to help them meet the cost of home energy;
- Purchase and delivery of other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department as countable leveraged resources; and
- Purchase and rental of supplies and equipment used to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials.

Discounts and credits:

- Discounted utility and bulk fuel prices, obtained, for example, by buying in large volume, using leveraged funds, regular LIHEAP funds, or leveraging incentive funds (only the amount of the reduction or discount is countable);
- Reduction in home energy bills, obtained, for example, when a household participates in a percent-of-income or percent-of-bill payment (only the amount of the reduction or discount is countable, not deferred charges);
- Partial or full waivers of utility and other home energy connection and reconnection fees, application fees, and late payment charges (only the amount of the waiver is countable);
- Partial or full waivers of home energy deposits where security deposits are a general requirement for the vendor's customers and the deposits are retained or kept for six months or longer (only the amount of the waiver is countable);
- Partial or full forgiveness of home energy bill arrearages (only the amount of the forgiveness is countable); and
- Discounts or reductions in the cost of certain tangible non-fuel items that help low-income households meet the costs of home energy—specifically, weatherization materials that are installed in recipient households' homes; blankets, space heating devices and equipment (including furnaces), and space cooling devices and equipment (including fans and air conditioners) that are provided to low-income households; and other tangible items specifically approved by the Department.

Third-party in-kind contributions:

- Donations of fuels used by recipient households for home energy;
- Donations of weatherization materials that are installed in recipient households' homes;
- Donations of blankets, space heating devices and equipment (including furnaces), and space cooling devices and equipment (including fans and air conditioners), that are provided to low-income households to help them meet the costs of home energy;
- Other donations of tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department as countable leveraged resources;
- Donations and loans of supplies and equipment used to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials;
- Unpaid volunteers' services specifically to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials; and
- Services of paid staff donated by their employer to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials.

Items that are delivered and/or installed using leveraged services, supplies, and/or equipment must be approved by HHS, but these items do not have to be leveraged resources. Only the leveraged resource/benefit is countable in such cases.

Petroleum violation escrow (PVE or oil overcharge) funds used under LIHEAP may be counted as leveraged funds under certain limited circumstances. Oil overcharge funds result from settlements of cases of overcharges which violated petroleum price controls in effect from 1973 to 1981, under the Emergency Petroleum Allocation Act of 1973. Since 1981, about $4 billion in oil overcharge funds have been distributed by the Department of Energy to the 50 States, the District of Columbia, and most U.S. territories; additional oil overcharge funds are expected to be distributed in the future. LIHEAP is one of the programs under which most of these funds can be used.

Oil overcharge funds obligated and expended under the LIHEAP program may be counted under the LIHEAP leveraging incentive program only by the 50 States, the District of Columbia, and the territories to which they were distributed directly, and only if they were distributed to the entity after October 1, 1990, and they were not previously required to be allocated to low-income households. These requirements are consistent with the guidance in Senate Report 101–421. In order to be counted under the leveraging incentive program, oil overcharge funds must be used for countable leveraged benefits as described in this interim rule.

Because oil overcharge funds are not distributed directly to Indian tribes or tribal organizations, tribal LIHEAP grantees cannot count them under the LIHEAP leveraging incentive program. If a tribe receives oil overcharge funds under a State LIHEAP program, the tribe would be a subgrantee or contractor of the State's program for the administration of these funds, and the funds would be used by the tribe as part of the State's LIHEAP program. If a tribe and State agree that the tribe's direct Federal LIHEAP allotment is to be increased in lieu of the tribe receiving oil overcharge funds under the State's LIHEAP program, the increased tribal funds would be regularly appropriated LIHEAP funds, not oil overcharge funds; the State would retain the actual oil overcharge funds.

Our listing of countable leveraged resources in this preamble and in the interim rule is not all-inclusive. We are not aware of all possible leveraged resources which would meet the requirements of the leveraging incentive program, and we do not want to discourage innovation. We therefore have left the opportunity for grantees to include and describe in their leveraging reports any other resources that they believe meet these requirements. We will evaluate such resources and determine whether to count them when we review these reports. Alternatively, grantees may wish to ask the Department for a determination about whether a resource is countable before preparing their leveraging reports.

Resources That Cannot Be Counted

Congress also has authorized a leveraging incentive program for the Department of Energy's Low-Income Weatherization Assistance Program. The DOE leveraging program will begin in FY 1992 if funds are appropriated for

it. Leveraging activities cannot be counted for both the HHS LIHEAP and the DOE LIWAP leveraging incentive programs. (If a grantee requests that DOE count a leveraged resource under the DOE LIWAP leveraging program and DOE declines to count the resource, the grantee may request that HHS count the resource under the LIHEAP leveraging program. The due date for submission of LIHEAP leveraging reports still applies in such a case.)

Also, the following resources and benefits cannot be counted under the LIHEAP leveraging incentive program:

- Deferred home energy obligations (a current reduction in a household's home energy bill cannot be counted if the household will be responsible in the future for full payment, as in a deferred payment plan, because there is no net addition to the household's home energy resources; only the portion of a bill that is actually waived or cancelled can be counted);
- Projected future savings from weatherization;
- Tax deductions and tax credits for donations, rate reductions, etc. (a countable donation or rate reduction would already be counted, as an addition to the energy resources of low-income households; including any deductions or credits claimed by the donor would result in double counting the resource; the deductions and credits are not additions to the energy resources of low-income households);
- Borrowed funds, interest paid on borrowed funds, and reductions in interest paid on borrowed funds (because borrowed funds must be repaid, there is no net addition to households' home energy resources; reduced interest rates do not result in direct, net additions to households' home energy resources, and it would be difficult to demonstrate that they do not simply result from searching for a lower interest rate, rather than from leveraging);
- Funds and other resources that have been or will be used as matching or cost sharing for any Federal program;
- Costs of planning and administration, space costs, and intake costs, even if performed by volunteers or with donated or grantee funds;
- Budget counseling, energy conservation education, or any other outreach activities (the LIHEAP statute requires grantees to conduct outreach activities designed to assure that eligible households are made aware of LIHEAP and similar assistance, and we encourage budget counseling and energy conservation education; however, these activities themselves do not provide quantifiable benefits or quantifiable net additions to the household's home energy resources);
- Volunteer services except for those that are specifically allowed;
- Paid services where payment is not made from countable leveraged resources, except for those that are specifically allowed; and
- All other in-kind contributions except for those that are specifically allowed.

This interim final rule does not allow the counting of certain types of donated material (such as office supplies and equipment), the donation of volunteer or paid services for office or administrative activities or costs or for outreach activities or costs, or the donation of any other volunteer or paid services that do not result in a direct, quantifiable addition to low-income households' total energy resources, as required by section 2607A(b)(1) of the LIHEAP statute. We have taken this position because of our concern over whether such donations result in a net increase in benefits to low-income households and over how to value them. Donated fuel, weatherization materials, blankets, and space heating and cooling devices and equipment are tangible items that provide specific, direct benefits to low-income households. The actual market value of these items should not be difficult to determine. We therefore are including these in-kind contributions as countable leveraged resources. However, donated materials such as office supplies and equipment do not result directly in a specific net addition to low-income households' total energy resources, as required by section 2607A(b)(1) of the LIHEAP statute. The same can be said of donations of time by volunteers or staff to perform office or administrative chores. Even though this may result in the grantee being able to free some of its funds for other uses, it would be extremely difficult to assure and to document that any savings are used for direct benefits to low-income households. Intake and outreach activities themselves do not provide direct, quantifiable benefits to households.

Valuation of Leveraged Resources

The benefits of countable leveraging activities must be measurable and quantifiable in dollars. Using the best data available to them, grantees applying for leveraging incentive funds must quantify the actual value in dollars of leveraged resources provided to low-income households during the base period. For example, consistent with the statutory and regulatory requirements, grantees may count the actual market value of weatherization materials installed in low-income households' residences and the actual amount paid for delivery and installation of these materials in weatherization programs provided with leveraged non-Federal funds. Anticipated future benefits to be derived from weatherization—that is, expected savings in home energy bills—cannot be counted.

The statute requires that grantees deduct from the gross value of leveraged resources any costs the grantee incurred in leveraging the resources and any costs imposed on low-income households. See "Valuation of Offsetting Costs" below for a discussion of this issue.

We are clarifying that only the value of leveraged resources that actually are provided to low-income households during the base period can be counted. For example, leveraged resources made available to the grantee's LIHEAP program, but not actually used for benefits to low-income households by the program in the base period, cannot be counted for that base period. Examples of leveraged resources that would not be counted are oil overcharge funds designated for LIHEAP but not used for countable benefits during the base period; such resources would be counted in the year they are used for countable benefits.

Third-party donations of fuel, weatherization materials, and other countable tangible items must be valued at their fair market value at the time of donation, according to the best data available to the grantee. Third-party loans of countable tangible items must be valued at their fair rental rate at the time of loan.

Unpaid volunteer services must be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subrecipient's organization. If the grantee or subrecipient does not have employees doing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market. Fringe benefits and overhead costs cannot be counted. Valuation of volunteers' services for installation of weatherization materials must vary according to the skill of the volunteer at the task. For example, the services of professional weatherization installers working at a volunteer weatherization project would be more highly valued than the services of unskilled weatherization volunteers.

When an employer other than a grantee or subrecipient furnishes free of charge the services of an employee in the employee's normal line of work, the services must be valued at the

employee's regular rate of pay, excluding the employee's fringe benefits and overhead costs. If the services are in a different line of work, the valuation described in the previous paragraph applies.

There are similar requirements for valuation of in-kind contributions in 45 CFR 92, the Department's regulations implementing uniform administrative requirements for Federal discretionary grants and cooperative agreements to State, local, and Indian tribal governments. These administrative rules are not a Federal requirement for grantee administration of the Department's block grants, including LIHEAP. However, LIHEAP grantees applying for leveraging incentive funds need to use consistent, standard methods for quantifying the value of countable in-kind contributions. We therefore are applying to third-party in-kind contributions to be counted as leveraged resources, most of the standards for "fair and reasonable" valuation of donated services, and donated and loaned supplies and equipment found at 45 CFR 92.24 (c), (d), and (e).

The benefits provided by leveraged resources other than in-kind contributions must be valued as explained in the following paragraphs.

Cash benefits for heating, cooling, energy crisis, and weatherization assistance must be valued at their actual amount at the time they were provided to, or on behalf of, the recipient household. Purchased fuel, weatherization materials, and other countable tangible items must be valued at their actual fair market value at the time of purchase, according to the best data available to the grantee. This means the commonly available household rate or cost in the local market area. Rented supplies and equipment must be valued at their actual fair rental rate in the local area at the time of rental. Delivery of fuel and other tangible items and delivery and installation of weatherization materials must be valued at the actual amount paid for these services. Home energy discounts and credits must be valued at their actual value—the actual amount of the discount, reduction, waiver, or forgiveness.

The fair market value of a fuel or tangible non-fuel item is the price or cost normally charged a customer in the same customer class, in the same local area, as the recipient household. For example, fuel purchased with leveraged cash at a reduced rate and provided without charge to low-income households would be valued at the actual fair market value of the fuel—the commonly available household rate or cost—at the time it was purchased. Fuel purchased with leveraged cash at a reduced rate and provided at a discount to low-income households would be valued at the actual fair market value of the fuel—the commonly available household rate or cost—at the time it was purchased, less (minus) the amount paid by the recipients. Only the amount of the net addition to recipient households' home energy resources may be counted.

When low-income households pay reduced rates on their home energy bills (for example, a household purchases fuel oil at reduced or discounted prices or receives reduced electricity rates), only the amount of the reduction or discount is countable, since this is the amount of the net addition to the households' energy resources and represents the amount in excess of the amount the households would acquire through purchase of energy at regular household rates. When low-income households receive home energy at no cost to themselves (for example, a LIHEAP grantee which has purchased fuel oil with leveraged resources or received donated fuel oil provides the oil to a household at no cost to the household), the amount that oil would have cost the household at "commonly available household rates" is countable. When low-income households receive a leveraged benefit that helps them meet all or part of their home energy costs (for example, a LIHEAP grantee pays a portion of a household's propane bill with countable oil overcharge funds, or a fuel fund pays a portion of a household's natural gas bill with countable funds), then the full amount of the benefit is countable, since this amount represents the net addition to the household's energy resources. Such a benefit is countable regardless of whether the energy is purchased at reduced rates or at "commonly available household rates."

Grantees may use leveraged funds, regularly appropriated LIHEAP funds, and leveraging incentive funds awarded to them, to purchase fuel or other approved tangible items at discounted prices. If the grantee uses leveraged funds, the gross value of the resource/benefit is the amount it would have cost the recipient household at the commonly available household rate or cost—the fair market value for an individual household. This means that a grantee may count as leveraged resources both the amount of money donated or otherwise leveraged and savings obtained through buying at discount rates. For example, a grantee may add $1,000 of its own funds to the LIHEAP program and then use the $1,000 to purchase fuel oil at a discount, so that it obtains oil that would be worth $1,200 at commonly available rates. In such a case, the grantee would have leveraged $1,000 in cash and $200 in discounts. If the grantee uses regular LIHEAP funds or leveraging incentive funds—that is, funds that are not countable leveraged resources—to purchase fuel or other approved tangible items at discounted prices, the gross value of the resource/benefit is the amount of the discount—the difference between the amount the item would have cost the recipient household at the commonly available household rate or cost and the reduced amount actually paid. For example, if the grantee had purchased the same fuel as above at the same price with regularly appropriated LIHEAP funds, it could count as leveraging only the $200 in discounts. In either case, any associated costs to the household, and any costs to the grantee to develop the resource, must be offset to determine the net value.

Valuation of Offsetting Costs

Section 2607A(d) requires that, to determine the net dollar value of grantees' leveraged resources, grantees must subtract from the gross dollar value of leveraged resources they received or acquired during the base period any costs they incurred to leverage such resources and any costs imposed on federally eligible low-income households.

Funds from grantees' regular LIHEAP allotments that are used to identify, develop, and demonstrate leveraging programs must be deducted as offsetting costs in the year these funds are obligated, whether or not there are any leveraged benefits resulting from them. Costs incurred from grantees' own funds to identify, develop, and demonstrate leveraging programs must be deducted in the first year that resulting leveraged benefits are provided to low-income households. If there is no resulting leveraged benefit from the expenditure of the grantee's own funds, the grantee's expenditure will not be counted or deducted.

Any costs assessed or charged to low-income households on a continuing or on-going basis, year after year, specifically for their participation in a counted leveraging program or for receipt of counted leveraged resources must be deducted in the base period these costs are charged. Any one-time costs or charges must be deducted in the first base period the leveraging program or leveraged resource is counted. For example, one-time charges paid by

participants to join a discount fuel buying fund must be offset from leveraged benefits received in the first base period the fuel buying fund is counted, even if those charges were made before this base period. Such costs or charges are to be subtracted from the gross value of a counted resource/benefit for low-income households whose benefits are counted, but not for any low-income or other households whose benefits are not counted.

On the other hand, nonspecific costs imposed on low-income households—such as costs resulting from an increase in a utility company's rate base made to pay for or support reduced rates for households in special programs—should not be deducted. In some cases, information on these costs may be available to grantees through utility companies or public utility commissions, etc. However, in most cases, it would be very difficult—if not impossible—to quantify these costs accurately and reliably.

The table below summarizes requirements for valuation of leveraged resources. It describes calculation of the gross and net value of different types of leveraged resources and benefits. Any costs and charges to recipient households whose benefits are counted as leveraged resources, that were paid by these households in order to receive these benefits, and any costs to the grantee to leverage a resource, must be subtracted from the resource's gross value, to calculate the resource's net value.

VALUATION OF LEVERAGED RESOURCES

Resource: Cash.
Benefit: Cash benefits for heating, cooling, energy crisis, and weatherization assistance; payments toward recipient households' home energy costs.
Gross Valuation: Amount of actual benefit (as applied toward actual amount charged recipient).
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: Cash.
Benefit: Purchase of fuel and non-fuel items, and purchase and rental of supplies and equipment used to deliver fuel and non-fuel items and to deliver and install weatherization materials—with no discount in purchase or rental price.
Gross Valuation: Amount recipient would have had to pay for fuel or item at fair market value, fair rental rate, or commonly available household rate or cost in local area, at the time the fuel or item was purchased or rented.
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: Cash and home energy discounts/credits.
Benefit: Purchase of fuel and non-fuel items, and purchase and rental of supplies and equipment used to deliver fuel and non-fuel items and to deliver and install weatherization materials—with discount in purchase or rental price.
Gross Valuation: Amount recipient would have had to pay for fuel or item at fair market value, fair rental rate, or commonly available household rate or cost in local area, at the time the fuel or item was purchased or rented.
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: Cash.
Benefit: Payments for delivery of fuel and non-fuel items, and for delivery and installation of weatherization materials.
Gross Valuation: Actual amount paid for service. (This is assumed to be what recipient would have had to pay for service.)
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: Home energy discounts/credits.
Benefit: Discounts, reductions, waivers, and forgiveness applying to fuel and non-fuel items.
Gross Valuation: Discounts and reductions: amount of reduction or discount, i.e., difference between amount recipient would have had to pay (at fair market value or commonly available household rate or cost in local area) and actual reduced amount paid. Waivers and forgiveness: amount of waiver or forgiveness.
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: In-kind contributions: donated tangible items.
Benefit: Fuel and non-fuel items, and supplies and equipment used to deliver fuel and non-fuel items and to deliver and install weatherization materials.
Gross Valuation: Amount recipient would have had to pay for fuel or item at the time it was donated (fair market value in local area at time of donation).
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: In-kind-contributions: loaned tangible items.
Benefit: Supplies and equipment used to deliver fuel and non-fuel items, and to deliver and install weatherization materials.
Gross Valuation: Fair rental rate in local area at time of loan.
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: In-kind contributions: unpaid volunteers' services and donated paid services.
Benefit: Delivery of fuel and non-fuel items, and delivery and installation of weatherization materials.
Gross Valuation: Amount that would ordinarily be paid for similar work, by persons of similar skill in this work, by grantee or subrecipient—or by other employers in local area, if grantee and subrecipient have no employee doing similar work. If donated paid services are in employee's normal line of work, use employee's regular rate of pay. In all cases, exclude fringe benefits and overhead.
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Documentation of Resources, Benefits, and Costs

Grantees should have clear, consistent, documented policies and procedures for documenting leveraged resources, benefits, and costs. Grantees are to maintain, or have readily available, records adequate to document leveraged resources and benefits, and offsetting costs and charges, and their valuation. (For example, a grantee—and/or subrecipients—should maintain records to document oil overcharge funds used under LIHEAP. A grantee should maintain and/or have easy access to documentation relating to counted fuel fund benefits.) These records are to consist of written and/or printed papers, etc., furnishing evidence that substantiates the claims made in the grantees' leveraging reports. These records are to be retained for three years after the end of the base period whose leveraged resources they document.

These records should include:

• Documentation of the sources of leveraged resources;

• Documentation of the negotiations, competitive bids, written agreements, legislation, regulations, and mandates through which leveraged resources were acquired or developed and under which they were provided;

• Documentation of recipient households' Federal eligibility, or eligibility for the grantee's LIHEAP program, as appropriate;

• Documentation of the type, amount, and value of leveraged benefits provided, including documentation of commonly available, local market household home energy rates or costs charged;

• Documentation of the type, amount, and value of in-kind contributions;

• Documentation of the costs incurred by the grantee to leverage resources and of the costs imposed on low-income households;

• Documentation of the calculation of the net addition to recipient households' home energy resources; and

• Documentation of the integration of leveraged resources with the grantee's LIHEAP program, as appropriate.

Recipient eligibility documentation, for example, should document each household's income or categorical eligibility. Benefit documentation, for example, should document the delivery and value of each benefit, including the amount or quantity and unit price, as appropriate.

We are requiring submission of some of this documentation with grantees' leveraging reports. We may require submission of additional documentation to clarify or support information submitted in a grantee's leveraging report. Our experience in reviewing reports on FY 1991 leveraging activities, and comments we receive on this interim rule, will enable us to determine whether to include more specific documentation requirements in the final rule.

Leveraging Report

Section 2607A(e) provides that grantees desiring leveraging incentive funds must submit a report to HHS that quantifies the grantee's leveraged resources for the base period. The base period is the fiscal or program year immediately preceding the award period for which the grantee is requesting leveraging incentive funds. These reports are grantees' applications for leveraging incentive funds. This interim final rule lists requirements for these reports. We have included in the list only the information we believe we need to know in order to fulfill our responsibility to evaluate grantee leveraging resources and benefits and to determine appropriate grantee shares of leveraging incentive funds.

LIHEAP grantees may use any format they choose in their annual applications for regular LIHEAP funds. Because of the need to review competitive applications for leveraging incentive funds, however, this interim final rule specifies that leveraging reports must be in a format established by HHS. We will notify grantees as soon as possible of the required format for these reports through an action transmittal.

Grantee leveraging reports must describe the leveraged resources provided to low-income households during the base period, and must indicate the grantee's valuation of these resources and of the costs of leveraging them.

The reports must clearly describe each separate leveraged resource, its benefit(s) to low-income households, and its source, as appropriate. The following are examples of such descriptions:

• Resource—cash: State funds; benefit—payments (cash benefits) for heating and energy crisis assistance; source—State funds;

• Resource—home energy discounts; benefit—reduced prices for fuel oil for low-income customers of ABC Company; source—ABC Company; and

• Resource—cash: XYZ Fuel Fund; benefit—payments (cash benefits) toward recipients' natural gas bills; source—donations by XYZ Gas Company's customers and general public.

It would not be sufficient, for example, to say "pilot project" or "demonstration program" without specifying the benefits the project or program provided, and the source of the funds used.

The reports must indicate the geographical area in which the leveraged benefits were provided to low-income households. For example, a report might indicate the city (or cities), and/or the county (or counties), in which a benefit was provided.

Section 2607A provides that HHS "may request any documentation" that it "determines necessary for the verification" of grantees' applications for leveraging incentive funds. This interim rule therefore establishes requirements for documentation and provides that the Department may require additional documentation and/or clarification as it determines necessary to verify information in a grantee's leveraging report, to decide whether a leveraged resource is countable, and to determine what the net valuation of a resource should be. In this case, we will set a date by which we must receive reported information on the resource that contains sufficient information to document countability and valuation—that is, a cut-off date for receipt of information we need in order to determine countability or valuation of a resource.

Submission Dates

Section 2607A(e) provides that grantees must submit their leveraging reports to HHS by July 31 of each year in order to qualify for leveraging incentive funds. We believe it is reasonable to assume that Congress intended the July 31 date to apply only after "forward funding" begins for the LIHEAP program. The statute provides that, beginning in July 1993, LIHEAP funds will be available for obligation on the basis of a program year of July 1 through June 30. Once forward funding begins, July 31 will be one month after the end of the program year or base period whose leveraging activities are reported; grantees will have adequate time to report leveraging activities for the entire program year. However, LIHEAP funds currently are available for obligation on the basis of the Federal fiscal year of October 1 through September 30. If grantees were required to submit leveraging reports by July 31, they would not be able to include leveraging activities for the last two or three months of the fiscal year.

We therefore are modifying the reporting dates for reports to be submitted before forward funding begins. The deadline for submission of reports while LIHEAP funding is provided to grantees on the basis of the Federal fiscal year of October 1 through September 30 is October 31 of the fiscal year for which leveraging incentive funds are requested. In these cases, October 31 will be one month after the end of the fiscal year or base period for which leveraging activities are reported.

Under forward funding, the deadline for submission of reports will be July 31 of the program year for which funds are requested. The report covering leveraging activities occurring during the nine-month transition period of October 1 to June 30 will be due on July 31, one month after the end of this period.

Reports must be postmarked or hand-delivered by these dates in order for a grantee to be considered for a share of leveraging incentive funds. Reports should be mailed or delivered to the following address: Director, Office of Community Services, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447.

Determination of Grantee Shares

The statute requires the Department to develop a formula for the distribution of leveraging incentive funds that takes into account the amount of leveraging acquired by a grantee in relation to the size of the grantee's allotment (allocation) under the regular LIHEAP program. In response to that direction, we have developed a two-part formula.

We will distribute one-half of the funds based on the amount of funds leveraged by a grantee during the base period relative to its net allotment under the regular LIHEAP program during the base period, as a proportion of the total amount of funds leveraged by all grantees in relation to their regular allotments during the same period. We will distribute the remainder of the funds based on the amount of leveraged resources that a grantee leveraged during the base period as a proportion of the total amount leveraged by all grantees. No grantee could receive a leveraging incentive award that is larger than its regular LIHEAP allotment. If the formula results in a grantee receiving an incentive award larger than its regular allotment, the "excess" funds will be reallocated to the other grantees receiving leveraging incentive funds. The leveraging figures used in making these calculations will be based on the net value of the leveraged resources contained in the leveraging reports filed by the grantees, as approved by HHS. The information on regular allocation figures will be based on HHS grant data. States' allocation figures will be net of any funds set aside for direct funding of Indian tribes and tribal organizations.

We believe this formula carries out Congress' intent to give the largest reward to those grantees that are the most successful in leveraging their LIHEAP dollars. Under this formula, if two grantees leverage the same amount of dollars, but one has a much larger regular allotment than the other, then the smaller one will receive a larger proportionate award of incentive funds. An example of how this formula would work is shown below. (Numbers may be affected by rounding.)

Grantee	Lev $	Allot $	Lev $ div. by allot $	Grantee percent	Part one share	Grantee percent of lev $	Part two share	Total share of $25M
Column A	B	C	D	E	F	G	H	I
1	$2,500,000	$111,890,000	0.0223	5.93	$741,543	17.57	$2,196,219	$2,937,762
2	768,000	45,670,000	0.0168	4.46	558,107	5.40	674,678	1,232,786
3	3,022,000	76,890,000	0.0393	10.44	1,304,404	21.24	2,654,790	3,959,194
4	789,000	56,899,000	0.0139	3.68	460,214	5.55	693,127	1,153,341
5	1,250,000	34,333,000	0.0364	9.67	1,208,331	8.78	1,098,109	2,306,440
6	5,900,000	23,800,000	0.2479	65.82	8,227,401	41.46	5,183,077	13,410,477
	14,229,000	349,482,000	0.3766	100.00	12,500,000	100.00	12,500,000	25,000,000

In this chart, the following information is included in the columns:

Column A is an individual grantee.

Column B is the dollar amount of non-Federal leveraged resources that the grantee provided to low-income households during the base period, after deducting offsetting costs, as approved by HHS.

Column C is the amount of the grantee's regular LIHEAP allotment during the base period, net of any set-asides for direct-grant Indian tribes and tribal organizations in the case of a State.

Column D is the amount of a grantee's leveraged resources as a proportion of its regular allotment (Column B divided by Column C).

Column E is the amount of a grantee's leveraged resources divided by its regular allotment, as a proportion of the resources leveraged by all grantees relative to their regular allotment, with the resulting figure expressed as a percentage (Column D divided by the total for Column D).

Column F is the amount of leveraging incentive funds that a grantee would receive under the first part of the formula (Column E multiplied by one-half of the leveraging funds available, in this case $12,500,000).

Column G is the grantee's leveraged resources as a percentage of the resources leveraged by all grantees (Column B divided by the total for Column B).

Column H is the amount of leveraging incentive funds that a grantee would receive under the second part of the formula (Column G multiplied by one-half of the leveraging funds available, in this case $12,500,000).

Column I is the total amount of leveraging incentive funds a grantee would receive under this two-part formula (Column F plus Column H).

In developing this formula, we considered three different formulas. In addition to considering three different formulas before we made our selection, we considered each of the formulas under three different scenarios to determine what grant awards would be under different situations. Under this process, we determined that the formula outlined above is the most fair for a wide variety of circumstances. Our calculations are shown below.

In the first scenario, we considered six different grantees that acquired varying levels of leveraged resources and had different regular allotments. We intentionally used an example in which a relatively small grantee leveraged a large amount of funds (grantee #6). We then calculated incentive grant awards under all three formulas. In the second scenario, all grantees leveraged the same percentage of their regular allotments, so that the grantees with the largest allotments also have the largest dollar amount of leveraged resources. In the third scenario, all grantees leveraged the same dollar amount, so that the percentage in relation to their regular allotment is different. We calculated each of the formulas under all three scenarios.

For the purposes of this discussion, we will call the formula that we have selected "Formula One." Under "Formula Two" that we considered, the incentive funds would be distributed solely on the basis of the amount of funds leveraged by a grantee relative to its net allotment under the regular LIHEAP program, as a proportion of the total amount of funds leveraged by all grantees in relation to their regular allotments. This is the same as Part One of our preferred Formula One, and the column descriptions noted above are the same.

"Formula Three" that we considered uses a more complex weighting equation. This formula applies several weighting factors to determine each grantee's share of the leveraging appropriation. Columns A, B, C, and D are the same as in the description noted above for Formula One. Column E is the amount of all leveraged dollars for all

grantees divided by their total allotments (i.e., Column E=the total of Column B divided by the total of Column D for each grantee), and is the same for all grantees. We have included this figure in the total line for Column E as well, rather than adding all the line items for Column E. Column F is a grantee's leveraged resources as a percentage of the resources leveraged by all grantees (Column B divided by the total for Column B), and is the same as Column G in Formula One. The weighted factor in Column D is then divided by the weighted factor in Column E, and that number multiplied by Column F to arrive at the factor in Column G. Each grantee's factor in Column G is then divided by the total for Column G to determine that grantee's percentage share of the leveraging fund (Column H). The percentage in Column H is multiplied by the leveraging appropriation ($25 million in this case) to obtain the grantee's grant award (Column I).

Our calculations are shown below. (Numbers may be affected by rounding.)

FIRST SCENARIO--VARYING LEVELS OF LEVERAGED RESOURCES AND ALLOTMENTS

Grantee	Lev $	Allot $	Lev $ div. by allot $	Grantee percent	Part one share	Grantee percent of lev $	Part two share	Total share of $25M
Column A	B	C	D	E	F	G	H	I
Formula one:								
1	$2,500,000	$111,890,000	0.0223	5.93	$741,543	17.57	$2,196,219	$2,937,762
2	768,000	45,670,000	0.0168	4.46	558,107	5.40	674,678	1,232,786
3	13,022,000	76,890,000	0.0393	10.44	1,304,404	21.24	2,654,790	3,959,194
4	789,000	56,899,000	0.0139	3.68	460,214	5.55	693,127	1,153,341
5	1,250,000	34,333,000	0.0364	9.67	1,208,331	8.78	1,098,109	2,306,440
6	5,900,000	23,800,000	0.2479	65.82	8,227,401	41.46	5,183,077	13,410,477
	14,229,000	349,482,000	0.3766	100.00	12,500,000	100.00	12,500,000	25,000,000

Grantee	Lev $	Allot $	Lev $ div. by allot $	Grantee percent	Grantee share of $25M
Column A	B	C	D	E	F
Formula two:					
1	$2,500,000	$111,890,000	0.0223	5.93	$1,483,086
2	768,000	45,670,000	0.0168	4.46	1,116,215
3	3,022,000	76,890,000	0.0393	10.44	2,608,808
4	789,000	56,899,000	0.0139	3.68	920,428
5	1,250,000	34,333,000	0.0364	9.67	2,416,662
6	5,900,000	23,800,000	0.2479	65.82	16,454,801
	14,229,000	349,482,000	0.3766	100.00	25,000,000

Grantee	Lev $	Allot $	Lev $ div. by allot $	Total Lev $ div. by total allot $	Grantee percent of lev $	D div. by E times F	Grantee percent	Grantee share of $25M
Column A	B	C	D	E	F	G	H	I
Formula three:								
1	$2,500,000	$111,890,000	0.0223	0.0407	17.57	0.0964	3.27	$818,269
2	768,000	45,670,000	0.0168	0.0407	5.40	0.0223	0.76	189,190
3	3,022,000	76,890,000	0.0393	0.0407	21.24	0.2050	6.96	1,739,909
4	789,000	56,899,000	0.0139	0.0407	5.55	0.0189	0.64	160,272
5	1,250,000	34,333,000	0.0364	0.0407	8.78	0.0786	2.67	666,678
6	5,900,000	23,800,000	0.2479	0.0407	41.46	2.5247	85.70	21,425,681
	14,229,000	349,482,000	0.3766	0.0407	100.00	2.9458	100.00	25,000,000

SECOND SCENARIO—SAME LEVERAGING TO ALLOTMENT RATIO FOR ALL GRANTEES (COLUMN D)

Grantee	Lev $	Allot $	Lev $ div. by allot $	Grantee percent	Part one share	Grantee percent of lev $	Part two share	Total share of $25 M
Column A	B	C	D	E	F	G	H	I
Formula one:								
1	$5,035,100	$111,890,000	0.0450	16.67	$2,083,333	32.02	$4,001,994	$6,085,328
2	2,055,200	45,670,000	0.0450	16.67	2,083,333	13.07	1,633,489	3,716,822
3	3,460,100	76,890,000	0.0450	16.67	2,083,333	22.00	2,750,142	4,833,475
4	2,560,500	56,899,000	0.0450	16.67	2,083,333	16.28	2,035,119	4,118,452
5	1,545,000	34,333,000	0.0450	16.67	2,083,333	9.82	1,227,996	3,311,329
6	1,071,000	23,800,000	0.0450	16.67	2,083,333	6.81	851,260	2,934,593

A	B	C	D	E	F	G	H	I
	15,726,700	349,482,000	0.2700	100.00	12,500,000	100.00	12,500,000	25,000,000

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Grantee percent E	Grantee share of $25M F
Formula two:					
1	$5,035,100	$111,890,000	0.0450	16.67	$4,166,667
2	2,055,200	45,670,000	0.0450	16.67	4,166,667
3	3,460,100	76,890,000	0.0450	16.67	4,166,667
4	2,560,500	56,899,000	0.0450	16.67	4,166,667
5	1,545,000	34,333,000	0.0450	16.67	4,166,667
6	1,071,000	23,800,000	0.0450	16.67	4,166,667
	15,726,700	349,482,000	0.2700	100.00	25,000,000

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Total lev $ div. by total allot $ E	Grantee percent of lev $ F	D div. by E times F G	Grantee percent H	Grantee share of $25M I
Formula three:								
1	$5,035,100	$111,890,000	0.0450	0.0450	32.02	0.3202	32.02	$8,003,989
2	2,055,200	45,670,000	0.0450	0.0450	13.07	0.1307	13.07	3,266,978
3	3,460,100	76,890,000	0.0450	0.0450	22.00	0.2200	2.00	5,500,283
4	2,560,500	56,899,000	0.0450	0.0450	16.28	0.1628	16.28	4,070,238
5	1,545,000	34,333,000	0.0450	0.0450	9.82	0.0982	9.82	2,455,992
6	1,071,000	23,800,000	0.0450	0.0450	6.81	0.0681	6.81	1,702,520
	15,726,700	349,482,000	0.2700	0.0450	100.00	1.0000	100.00	25,000,000

Third Scenario—Same Leveraged Dollar Amounts For All Grantees (Column B)

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Grantee percent E	Part one share F	Grantee percent of lev $ G	Part two share H	Total share of $25M I
Formula one:								
1	$5,000,000	$111,890,000	0.0447	6.74	$842,781	16.67	$2,083,333	$2,926,114
2	5,000,000	45,670,000	0.1095	16.52	2,064,785	16.67	2,083,333	4,148,118
3	5,000,000	76,890,000	0.0650	9.81	1,226,411	16.67	2,083,333	3,309,744
4	5,000,000	56,899,000	0.0879	13.26	1,657,300	16.67	2,083,333	3,740,634
5	5,000,000	34,333,000	0.1456	21.97	2,746,592	16.67	2,083,333	4,829,925
6	5,000,000	23,800,000	0.2101	31.70	3,962,132	16.67	2,083,333	6,045,465
	30,000,000	349,482,000	0.6628	100.00	12,500,000	100.00	12,500,000	25,000,000

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Grantee percent E	Grantee share of $25M F
Formula two:					
1	$5,000,000	$111,890,000	0.0447	6.74	$1,685,561
2	5,000,000	45,670,000	0.1095	16.52	4,129,570
3	5,000,000	76,890,000	0.0650	9.81	2,452,822
4	5,000,000	56,899,000	0.0879	13.26	3,314,601
5	5,000,000	34,333,000	0.1456	21.97	5,493,183
6	5,000,000	23,800,000	0.2101	31.70	7,924,263
	30,000,000	349,482,000	0.6628	100.00	25,000,000

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Total lev $ div. by total allot $ E	Grantee percent of lev $ F	D div. by E times F G	Grantee percent H	Grantee share of $25M I
Formula three:								
1	$5,000,000	$111,890,000	0.0447	0.0858	16.67	0.0868	6.74	$1,685,561
2	5,000,000	45,670,000	0.1095	0.0858	16.67	0.2126	16.52	4,129,570
3	5,000,000	76,890,000	0.0650	0.0858	16.67	0.1263	9.81	2,452,822
4	5,000,000	56,899,000	0.0879	0.0858	16.67	0.1706	13.26	3,314,601

Grantee	Lev $	Allot $	Lev $ div. by allot $	Total lev $ div. by total allot $	Grantee percent of lev $	D div. by E times F	Grantee percent	Grantee share of $25M
Column A	B	C	D	E	F	G	H	I
5	5,000,000	34,333,000	0.1456	0.0858	16.67	0.2828	21.97	5,493,183
6	5,000,000	23,800,000	0.2101	0.0858	16.67	0.4079	31 70	7,924,263
	30,000,000	349,482,000	0.6628	0.0858	100.00	1.2868	100.00	25,000,000

We believe that Formula One provides the fairest distribution of the incentive funds under the wide range of situations outlined in the three scenarios above. The other scenarios would skew the results too heavily in favor of one or another of the grantees. We therefore will distribute the leveraging incentive funds under Formula One.

Uses of Leveraging Incentive Funds

Regular LIHEAP grant funds and LIHEAP leveraging incentive funds are separately authorized in the LIHEAP statute—the former at section 2602(b), and the latter at section 2602(d). Leveraging incentive funds cannot be used for some of the purposes for which regular LIHEAP funds can be used. Section 2607A directs that leveraging incentive funds must be used to increase or maintain benefits to households—that is, they must be used for LIHEAP heating, cooling, crisis, and/or weatherization assistance.

While section 2607A limits the types of activities for which leveraging incentive funds can be used, it does not limit the amount of leveraging incentive funds that can be used for each of the allowable activities. We have determined that the 15 percent limitation on the use of regular LIHEAP funds for weatherization does not apply to leveraging incentive funds. If most of a grantee's leveraged resources come from weatherization activities, the grantee should have the option to use most of the resulting leveraging incentive funds for weatherization. However, leveraging incentive funds cannot be counted in the base for calculation of maximum grantee weatherization obligations and expenditures for regular LIHEAP funds.

In accordance with the requirements of section 2607A, leveraging incentive funds cannot be used for costs of planning and administration. However, if a grantee receives more than a minimal leveraging incentive fund award, it likely will need to use additional monies to administer these funds. We therefore have determined that leveraging incentive funds can be counted in the base for calculating the grantee's maximum planning and administrative costs. This is consistent with the treatment of oil overcharge funds provided under section 155 of Pub. L. 97-377 (the Warner Amendment) and Exxon oil overcharge funds.

Consistent with the statutory emphasis on increasing the amount of LIHEAP heating, cooling, crisis, and weatherization assistance, leveraging incentive funds cannot be used for transfer to other HHS block grants, and they cannot be counted in the base for calculation of maximum grantee transfers to other HHS block grants.

Leveraging incentive funds cannot be counted in the base for calculation of maximum grantee carryover of regular LIHEAP funds. (However, see below for "Peroid of Obligation of Leveraging Incentive Funds.")

Grantees are to include the uses of leveraging incentive funds in their LIHEAP plans. Since leveraging incentive funds will be awarded during a fiscal or program year, rather than at the beginning, grantees probably will wish to cover the uses of these funds in amendments to their plans.

Grantees are to document uses of leveraging incentive funds in the same way they document uses of regular LIHEAP funds. Leveraging incentive funds are subject to the same audit requirements as regular LIHEAP funds.

Period of Obligation for Leveraging Incentive Funds

Leveraging incentive funds will be awarded during the course of each fiscal or program year, rather than at the beginning, since grantees' leveraging reports are to be submitted a month after each new fiscal or program year begins, and since the necessary Federal review and approval of leveraging reports will follow. We therefore have determined that leveraging incentive funds are not subject to the statutory and regulatory carryover and reallotment requirements that apply to regular LIHEAP funds. (Section 2607(b) of the LIHEAP statute provides that grantees may carry forward for use in the succeeding fiscal year no more than 10 percent of their regular LIHEAP funds payable for the prior fiscal year and not transferred to another HHS block grant.) Instead, all leveraging incentive funds will be available for obligation from the date they are awarded to a grantee until the end of the succeeding fiscal or program year. Grantees may use these funds during the remainder of the fiscal or program year in which they were awarded, and throughout the following fiscal or program year. Any leveraging incentive funds not obligated for allowable purposes by the end of this obligation period must be returned to the Department.

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more or has certain other specified effects. The Department has determined that these regulations are not major rules within the meaning of the Executive Order because they will not have an effect on the economy of $100 million or more, or otherwise meet the threshold criteria.

Paperwork Reduction Act

Section 96.87 of this interim final rule contains information collection requirements relating to applications for leveraging incentive funds. Section 2607A of the Low-Income Home Energy Assistance Act of 1981 requires grantees to submit these leveraging reports in order to qualify for leveraging incentive funds; these reports are the only source of the information HHS needs in order to allocate leveraging incentive funds among grantees. ACF estimates the reporting burden on applicants for leveraging incentive funds to be 40 hours per applicant. As required by the Paperwork Reduction Act of 1980, the Department will submit these requirements to the Office of Management and Budget (OMB) for its review. Other organizations and individuals desiring to submit comments on this information collection requirement should direct them to (1) Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, and (2) the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, room 3208, Washington, DC

20503, Attention: Desk Officer for Administration for Children and Families, Department of Health and Human Services. After OMB approval is obtained, we will publish the OMB control number in the Federal Register.

Section 96.83 requires grantees to submit a waiver request if they wish to obligate more than 15 percent of their LIHEAP funds allotted or funds available in any fiscal year for weatherization activities. We expect to receive less than 10 waiver requests per year, and thus this provision is not subject to the Paperwork Reduction Act. We received only one waiver request for FY 1991, even though the total FY 1991 LIHEAP appropriation exceeded the FY 1990 appropriation by more than $165,000,000, and thus grantees could be expected to meet the requirements for a standard waiver.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these interim rules is on State, tribal, and territorial governments. Therefore, the Department of Health and Human Services certifies that these rules will not have a significant economic impact on a substantial number of small entities because they affect payments to States, tribes, and territories. Thus, a regulatory flexibility analysis is not required.

Catalog of Federal Domestic Assistance Program Number

The Catalog of Federal Domestic Assistance program number for the low-income home energy assistance program (LIHEAP) is 93.028.

List of Subjects in 45 CFR Part 96

Energy, Grant programs-energy, Grant programs-Indians, Income assistance, Leveraging incentive program, Low and moderate income housing, Reporting and record keeping requirements, Weatherization.

Approved: November 25, 1991.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

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

PART 96—[AMENDED]

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

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

Subpart E—Enforcement

2. Section 96.50 is amended by adding a new sentence to the end of paragraph (d) to read as follows:

§ 96.50 Complaints.

* * * * *

(d) * * * Under the low-income home energy assistance program, within 60 days after receipt of complaints, the Department will provide a written response to the complainant, stating the actions that it has taken to date and the timetable for final resolution of the complaint.

* * * * *

Subpart H—Low-income Home Energy Assistance Program

3. Section 96.81 is revised as follows:

§ 96.81 Reallotment report.

As a part of the reallotment procedure established by section 2607(b) of Public Law 97–35 (42 U.S.C. 8626(b)), beginning with funds to be held available for fiscal year 1992, each recipient of funds must submit a report to the Secretary by August 1 of each year containing the following information:

(a) The amount of funds that the grantee desires remain available for obligation in the succeeding fiscal year, not to exceed 10 percent of the funds payable to the grantee and not transferred pursuant to section 2604(f) of Public Law 97–35 (42 U.S.C. 8623(f));

(b) A statement of the reasons that this amount to remain available will not be used in the fiscal year for which it was allotted;

(c) A description of the types of assistance to be provided with the amount held available; and

(d) The amount of funds, if any, to be subject to reallotment.

4. A new section 96.83 is added to read as follows:

§ 96.83 Increase in maximum amount that may be used for weatherization and other energy-related home repair.

(a) *Scope.* This section concerns requests for waivers increasing from 15 percent to up to 25 percent of LIHEAP funds allotted or available to a grantee for a fiscal year, the maximum amount that grantees may use for low-cost residential weatherization and other energy-related home repair for low-income households (hereafter referred to as "weatherization"), pursuant to section 2605(k) of Public Law 97–35 (42 U.S.C. 8624(k)).

(b) *Public comment.* Before submitting waiver requests to the Secretary, grantees must make proposed waiver requests available for public inspection within their jurisdictions in a manner that will facilitate timely and meaningful review of, and comment upon, such requests.

(c) *Waiver request.* After March 31 of each fiscal year, the chief executive officer (or his or her designee) may request a waiver of the weatherization obligation limit if the grantee meets criteria (i), (ii), and (iii) in paragraph (c)(2) below, or can show "good cause" for obtaining a waiver despite a failure to meet one or more of these criteria. All waiver requests must be in writing and must include the following information:

(1) A statement of the total percent of its LIHEAP funds allotted or available in the fiscal year for which the waiver is requested, that the grantee desires to use for weatherization.

(2) A statement of whether the grantee has met each of the following three criteria:

(i) In the fiscal year for which the waiver is requested, the combined total (aggregate) number of households in the grantee's service population that will receive LIHEAP heating, cooling, and crisis assistance benefits will not be fewer than the combined total (aggregate) number that received such benefits in the preceding fiscal year;

(ii) In the fiscal year for which the waiver is requested, the combined total (aggregate) amount of LIHEAP heating, cooling, and crisis assistance benefits will not be less than the combined total (aggregate) amount received in the preceding fiscal year; and

(iii) All LIHEAP weatherization activities to be carried out by the grantee in the fiscal year for which the waiver is requested have been shown to produce measurable savings in energy expenditures.

(3) With regard to criterion (2)(i) above, a statement of the grantee's best estimate of the appropriate household totals for the fiscal year for which the waiver is requested and for the preceding fiscal year.

(4) With regard to criterion (2)(ii) above, a statement of the grantee's best estimate of the appropriate benefit totals for the fiscal year for which the waiver is requested and for the preceding fiscal year.

(5) With regard to criterion (2)(iii) above, a description of the weatherization activities to be carried out by the grantee in the fiscal year for which the waiver is requested (with all LIHEAP funds proposed to be used for weatherization, not just with the amount over 15 percent), and an explanation of the specific criteria under which the

grantee has determined whether these activities have been shown to produce measurable savings in energy expenditures.

(6) A description of how and when the proposed waiver request was made available for timely and meaningful public review and comment, copies and/or summaries of public comments received on the request, a statement of the method for reviewing public comments, and a statement of the changes, if any, that were made in response to these comments.

(7) If the request is made by the chief executive officer's designee and the Department does not have on file written evidence of the designation, the request must also include evidence of the appropriate delegation of authority.

(d) *"Standard" waiver.* If the Department determines that a grantee has met the three criteria in paragraph (c)(2) above, has provided all information specified in paragraph (c) above, has shown adequate concern for timely and meaningful public review and comment, and has proposed weatherization that meets all relevant requirements of title XXVI of Public Law 97–35 (42 U.S.C. 8621 *et seq.*) and applicable Federal regulations, the Department will approve a "standard" waiver.

(e) *"Good cause" waiver.* If a grantee does not meet one or more of the three criteria in paragraph (c)(2) above, then the grantee may, in accordance with the provisions in paragraphs (e)(1) and (e)(2) below, submit documentation that demonstrates good cause why a waiver should be granted despite the grantee's failure to meet this criterion or these criteria. "Good cause" waiver requests must include the following information, in addition to the information specified in paragraph (c) above:

(1) For each criterion under paragraph (c)(2) above that the grantee does not meet, an explanation of the specific reasons demonstrating good cause why the grantee does not meet the criterion and yet proposes to use additional funds for weatherization, citing measurable, quantified data, and stating the source(s) of the data used.

(2) A statement of the grantee's LIHEAP heating, cooling, and crisis assistance eligibility standards and benefit levels for the fiscal year for which the waiver is requested and for the preceding fiscal year; and, if eligibility standards were lower and/or benefit levels were higher in the preceding fiscal year, an explanation of the reasons demonstrating good cause why a waiver should be granted.

If the Department determines that a grantee requesting a "good cause" waiver has demonstrated good cause why a waiver should be granted, has provided all information specified in paragraph (c) above and in this paragraph, has shown adequate concern for timely and meaningful public review and comment, and has proposed weatherization that meets all relevant requirements of title XXVI of Public Law 97–35 (42 U.S.C. 8621 *et seq.*) and applicable Federal regulations, the Department will approve a "good cause" waiver.

(f) *Approvals and disapprovals.* After receiving the grantee's completed waiver request, the Department will respond in writing within 45 days, informing the grantee whether the request is approved on either a "standard" or "good cause" basis. The Department may request additional information and/or clarification from the grantee. If additional information and/or clarification is requested, the 45 day period for the Department's response will start when the additional information and/or clarification is received. No waiver will be granted for a previous fiscal year.

(g) *Effective period.* Waivers will be effective from the date of the Department's written approval until the funds for which the waiver is granted are obligated in accordance with title XXVI of Public Law 97–35 (42 U.S.C. 8621 *et seq.*) and applicable regulations. Funds for which a weatherization waiver was granted that are carried over to the following fiscal year and used for weatherization shall not be considered "funds allotted" or "funds available" for the purposes of calculating the maximum amount that may be used for weatherization in the succeeding fiscal year.

5. Section 96.84 is revised as follows:

§ 96.84 Miscellaneous.

(a) *Rights and responsibilities of territories.* Except as otherwise provided, a territory eligible for funds shall have the same rights and responsibilities as a State.

(b) *Applicability of assurances.* The assurances in section 2605(b) of Public Law 97–35 (42 U.S.C. 8624(b)), as amended, pertain to all forms of assistance provided by the grantee, with the exception of assurance 15, which applies to heating, cooling, and energy crisis intervention assistance.

(c) *Prevention of waste, fraud, and abuse.* Grantees must establish appropriate systems and procedures to prevent, detect, and correct waste, fraud, and abuse in activities funded under the low-income home energy assistance program. The systems and procedures are to address possible waste, fraud, and abuse by clients, vendors, and administering agencies.

6. Section 96.86 is revised as follows:

§ 96.86 Exemption from requirement for additional outreach and intake services.

The requirement in section 2605(b)(15) of Public Law 97–35 (42 U.S.C. 8624(b)(15)), as amended by section 704(a)(4) of the Augustus F. Hawkins Human Services Reauthorization Act of 1990 (Pub. L. 101–501)—concerning additional outreach and intake services—does not apply to:

(a) Indian tribes and tribal organizations; and

(b) Territories whose annual LIHEAP allotments under section 2602(b) of Public Law 97–35 (42 U.S.C. 8621(b)) are $200,000 or less.

7. Section 96.87 is revised as follows:

§ 96.87 Leveraging incentive program.

(a) *Scope.* This section concerns the leveraging incentive program authorized by section 2607A of Public Law 97–35 (42 U.S.C. 8626a).

(b) *Definitions.* (1) *Base period* means the period for which a grantee's leveraging activities are reported to the Department; grantees' leveraging activities during the base period or base year are the basis for the distribution of leveraging incentive funds during the succeeding fiscal year (the award period or award year). Leveraged resources are counted in the base period during which their benefits are provided to low-income households.

(2) *Countable petroleum violation escrow funds* means petroleum violation escrow (oil overcharge) funds that were distributed to a State or territory after October 1, 1990, were added to and used as a part of the State or territory's LIHEAP program, and were not previously required to be allocated to low-income households.

(3) *Home energy* means a source of heating or cooling in residential dwellings.

(4) *Low-income households* means federally eligible (federally qualified) households meeting the standards for LIHEAP income eligibility and/or LIHEAP categorical eligibility as set by section 2605(b)(2) of Public Law 97–35 (42 U.S.C. 8624(b)(2)).

(5) *Weatherization* means low-cost residential weatherization and other energy-related home repair for low-income households. Weatherization must be directly related to home energy.

(c) *LIHEAP funds used to identify, develop, and demonstrate leveroging programs.* (1) Each fiscal year, States (excluding Indian tribes, tribal organizations, and territories) may

spend up to the greater of $35,000 or 0.08 percent of their Federal LIHEAP allotments allocated under title XXVI of Public Law 97–35 (42 U.S.C. 8621 *et seq.*) to identify, develop, and demonstrate leveraging programs under section 2607A(c)(2) of Public Law 97–35 (42 U.S.C. 8626a(c)(2)). Each fiscal year, Indian tribes, tribal organizations, and territories may spend up to two (2.0) percent of their Federal LIHEAP allotments allocated under title XXVI of Public Law 97–35 (42 U.S.C. 8621 *et seq.*) to identify, develop, and demonstrate leveraging programs under section 2607A(c)(2) of Public Law 97–35 (42 U.S.C. 8626a(c)(2)). For the purpose of this paragraph, Federal LIHEAP allotments include funds from regular and supplemental appropriations, with the exception of leveraging incentive funds provided under section 2602(d) of Public Law 97–35 (42 U.S.C. 8621(d)).

(2) LIHEAP funds used under section 2607A(c)(2) of Public Law 97–35 (42 U.S.C. 8626a(c)(2)) to identify, develop, and demonstrate leveraging programs are not subject to the limitation in section 2605(b)(9) of Public Law 97–35 (42 U.S.C. 8624(b)(9)) on maximum percent of Federal funds that may be used for costs of planning and administration.

(d) *Requirements for leveraged resources and benefits.* (1) In order to be counted under the leveraging incentive program, leveraged resources and benefits must meet all of the following four criteria:

(i) They are from non-Federal sources.

(ii) They are provided to the grantee's low-income home energy assistance program, or to federally qualified low-income households as described in section 2605(b)(2) of Public Law 97–35 (42 U.S.C. 8624(b)(2)).

(iii) They are measurable and quantifiable in dollars.

(iv) They represent a net addition to the total home energy resources available to low-income households in excess of the amount of such resources that could be acquired by these households through the purchase of home energy, or the purchase of items that help these households meet the cost of home energy, at commonly available household rates or costs, or that could be obtained with regular LIHEAP allotments provided under section 2602(b) of Public Law 97–35 (42 U.S.C. 8621(b)).

(2) Also, in order to be counted under the leveraging incentive program, leveraged resources and benefits must meet at least one of the following three criteria:

(i) They result from the acquisition or development by the grantee's LIHEAP program of quantifiable benefits for low-income households that are obtained from energy vendors through negotiation, regulation, or competitive bid. The grantee's LIHEAP program has substantial involvement in the acquisition or development of these benefits. The involvement of the grantee's LIHEAP program is considerable, important, material, and of real value or effect.

(ii) They are appropriated or mandated by the grantee for distribution through the grantee's LIHEAP program. They are provided to low-income households eligible under the grantee's standards, as a part of (through or within) the grantee's LIHEAP program, consistent with the Federal statutes and regulations applicable to the LIHEAP program.

(iii) They are appropriated or mandated by the grantee for distribution under the grantee's LIHEAP plan (referred to in section 2605(c)(1)(A) of Public Law 97–35) (42 U.S.C. 8624(c)(1)(A)) to low-income households, and are determined by the Secretary to be integrated with the grantee's LIHEAP program. They are identified and described in the plan and distributed as indicated in the plan; however, they are not provided to low-income households as a part of (through or within) the grantee's LIHEAP program. They are coordinated with the grantee's LIHEAP program and are provided in cooperation and in conjunction with the LIHEAP program.

(e) *Countable leveraged resources and benefits.* Resources and benefits that are countable under the leveraging incentive program include but are not limited to the following, provided that they also meet all other applicable requirements:

(1) Leveraged cash resources: State, tribal, territorial, and other public and private non-Federal funds, including countable petroleum violation escrow funds as defined in paragraph (b)(2) above, that are used in the base period for:

(i) Cash benefits to or on behalf of recipient households, for heating, cooling, energy crisis, and weatherization assistance, including payments toward recipient households' home energy costs;

(ii) Purchase and delivery of fuels used by recipient households for home energy (such as fuel oil, liquefied petroleum gas, and wood);

(iii) Purchase, delivery, and installation of weatherization materials;

(iv) Purchase and delivery of blankets, space heating devices and equipment (such as furnaces), and space cooling devices and equipment (such as fans and air conditioners) that help low-income households meet the costs of home energy;

(v) Purchase and delivery of other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department as countable leveraged resources; and

(vi) Purchase and rental of supplies and equipment used to deliver fuels and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials.

(2) Home energy discounts and credits that are provided in the base period to low-income households and apply to fuels used for home energy by these households, in the amount of the discount, reduction, waiver, or forgiveness, or that apply to certain tangible non-fuel items that are provided in the base period to low-income households and help these households meet the costs of home energy, in the amount of the discount or reduction:

(i) Discounts or reductions in utility and bulk fuel prices, rates, or bills;

(ii) Partial or full waivers of utility and other home energy connection and reconnection fees, application fees, and late payment charges;

(iii) Partial or full waivers of home energy security deposits where security deposits are a general requirement for the vendor's customers and the deposits are kept for six months or longer;

(iv) Partial or full forgiveness of home energy bill arrearages; and

(v) Discounts or reductions in the cost of the following tangible items:

(A) Weatherization materials that are installed in recipients' homes;

(B) Blankets, space heating devices and equipment (such as furnaces), and space cooling devices and equipment (such as fans and air conditioners), that are provided to low-income households; and

(C) Other tangible items that are specifically approved by the Department.

(3) Certain third-party in-kind contributions that are provided in the base period to low-income households:

(i) Donated fuels used by recipient households for home energy (such as fuel oil, liquefied petroleum gas, and wood);

(ii) Donated weatherization materials that are installed in recipients' homes;

(iii) Donated blankets, space heating devices and equipment (such as furnaces), and space cooling devices and equipment (such as fans and air conditioners), that help low-income

households meet the costs of home energy;

(iv) Other donated tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department as countable leveraged resources;

(v) Donated and loaned supplies and equipment used to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials;

(vi) Unpaid volunteers' services specifically to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials; and

(vii) Paid staff whose services are donated by their employer specifically to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials.

(f) *Resources and benefits that cannot be counted.* The following resources and benefits are not countable under the leveraging incentive program:

(1) Leveraged resources counted under the leveraging incentive program(s) for the Low-Income Weatherization Assistance Program administered by the Department of Energy, or for any other Federal leveraging incentive program;

(2) Deferred home energy obligations;

(3) Projected future savings from weatherization;

(4) Tax deductions and tax credits for donations, rate reductions, etc.;

(5) Borrowed funds, interest paid on borrowed funds, and reductions in interest paid on borrowed funds;

(6) Funds and other resources that have been or will be used as matching or cost sharing for any Federal program;

(7) Costs of planning and administration, space costs, and intake costs;

(8) Budget counseling, energy conservation education, and all other outreach activities;

(9) Paid services where payment is not made from countable leveraged resources, unless these services are donated as a countable in-kind contribution by the employer;

(10) All in-kind contributions except those described in paragraph (e)(3) above; and

(11) All other resources that do not meet the requirements of section 2607A of Public Law 97–35 (42 U.S.C. 8626a) and this section.

(g) *Valuation and documentation of leveraged resources and offsetting costs.* (1) Leveraged cash resources will be valued at the fair market value of the benefits they provided to low-income households during the base period, as follows. Payments to or on behalf of low-income households for heating, cooling, energy crisis, and weatherization assistance will be valued at their actual amount or value at the time they were provided. Purchased fuel, weatherization materials, and other countable tangible items will be valued at their fair market value (the commonly available household rate or cost in the local market area) at the time they were purchased. Rented supplies and equipment will be valued at their fair rental rate (in the local area) at the time of rental. Delivery of fuel and other tangible items and delivery and installation of weatherization materials will be valued at the actual amount paid for these services.

(2) Home energy discounts and credits will be valued at their actual amount or value.

(3) Donated fuel, donated weatherization materials, and other countable donated tangible items will be valued at their fair market value (the commonly available household cost in the local market area) at the time of donation. Loaned supplies and equipment will be valued at their fair rental rate (in the local area) at the time of loan.

(4) Donated unpaid services, and donated third-party paid services that are not in the employee's normal line of work, will be valued at rates consistent with those ordinarily paid for similar work, by persons of similar skill in this work, in the grantee's or subrecipient's organization in the local area. If the grantee or subrecipient does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. Fringe benefits and overhead costs will not be counted. Donated third-party paid services of employees in their normal line of work will be valued at the employer's regular rate of pay, excluding the employee's fringe benefits and overhead costs.

(5) Offsetting costs and charges will be valued at their actual amount or value.

(i) Funds from grantees' regular LIHEAP allotments that are used to identify, develop, and demonstrate leveraging programs will be deducted as offsetting costs in the base period in which these funds are obligated, whether or not there are any resulting leveraged benefits. Costs incurred from grantees' own funds to identify, develop, and demonstrate leveraging programs will be deducted in the first base period that resulting leveraged benefits are provided to low-income households. If there is no resulting leveraged benefit from the expenditure of the grantee's own funds, the grantee's expenditure will not be counted or deducted.

(ii) Any costs assessed or charged to low-income households on a continuing or on-going basis, year after year, specifically for their participation in a counted leveraging program or for receipt of counted leveraged resources will be deducted in the base period these costs are charged. Any one-time costs or charges to low-income households will be deducted in the first base period the leveraging program or resource is counted. Such costs or charges, will be subtracted from the gross value of a counted resource or benefit for low-income households whose benefits are counted, but not for any households whose benefits are not counted.

(6) Only the amount of the net addition to recipient low-income households' home energy resources may be counted in the valuation of a leveraged resource.

(7) Leveraged resources and benefits, and offsetting costs and charges, will be valued according to the best data available to the grantee.

(8) Grantees must maintain, or have readily available, records sufficient to document leveraged resources and benefits, and offsetting costs and charges, and their valuation. These records must be retained for three years after the end of the base period whose leveraged resources and benefits they document.

(h) *Leveraging report.* (1) In order to qualify for leveraging incentive funds, each grantee desiring such funds must submit to the Secretary a report on the leveraged resources provided to low-income households during the preceding fiscal year or base period. These reports must contain the following information in a format established by the Secretary.

(i) For each separate leveraged resource, the report must:

(A) Briefly describe the specific leveraged resource and the specific benefit(s) provided to low-income households by this resource, and state the source of the resource;

(B) State whether the resource was acquired in cash, as a discount/credit, or in kind;

(C) Indicate the geographical area in which the benefit(s) were provided to recipients;

(D) State the month(s) and year(s) when the benefit(s) were provided to recipients;

(E) State the total dollar value of the resource or benefit(s) as determined in accordance with paragraph (g) above, indicate the source(s) of the data used, and describe how the grantee quantified the value and calculated the total amount;

(F) State the number of low-income households to whom the benefit(s) were provided, and state the eligibility standard(s) for the low-income households to whom the benefit(s) were provided;

(G) Indicate the agency or agencies that administered the resource or benefit(s); and

(H) Explain how the resource and benefit(s) meet at least one of the criteria for leveraged resources in paragraph (d)(2) above.

(ii) State the total dollar value of the leveraged resources and benefits provided to low-income households during the base period (the sum of the amounts listed pursuant to paragraph (h)(1)(i)(D) above).

(iii) State in dollars any costs incurred by the grantee to leverage resources, and any cost and charges imposed on low-income households to participate in a counted leveraging program or to receive counted leveraged benefits, as determined in accordance with paragraph (g)(5) above. Include the amount of the grantee's LIHEAP allotment under section 2602(b) of Public Law 97–35 (42 U.S.C. 8621(b)) that the grantee used during the base period to identify, develop, and demonstrate leveraging programs.

(iv) State the net amount of leveraged resources and benefits for the base period. (Subtract the amount in paragraph (iii) above from the amount in paragraph (ii) above.)

(2) Leveraging reports must be postmarked or hand-delivered not later than July 31 of each year, with the following exceptions: While LIHEAP funding is provided to grantees for use on the basis of the Federal fiscal year, reports must be postmarked or hand-delivered not later than October 31 of the fiscal year for which leveraging incentive funds are requested.

(3) The Department may require submission of additional documentation and/or clarification as it determines necessary to verify information in a grantee's leveraging report, to determine whether a leveraged resource is countable, and/or to determine the net valuation of a resource. In such cases, the Department will set a date by which it must receive information sufficient to document countability and/or valuation.

(i) *Determination of grantee shares of leveraging incentive funds.* Allocation of leveraging incentive funds to grantees will be computed according to a formula using the following factors and weights:

(1) Fifty (50) percent based on the net amount of countable non-Federal leveraged resources provided to low-income households during the base period by a grantee relative to its net allocation of funds under section 2602(b) of Public Law 97–35 (42 U.S.C. 8621(b)), as a proportion of the non-Federal leveraged resources provided by all grantees relative to their net allocation of funds under that section; and

(2) Fifty (50) percent based on the net amount of countable non-Federal leveraged resources provided to low-income households during the base period by a grantee as a proportion of the total non-Federal leveraged resources provided by all grantees; except that no grantee may receive an award larger than its current regular allotment under section 2602(b) of Public Law 97–35 (42 U.S.C. 8621(b)). The calculations will be based on data contained in the leveraging reports submitted by grantees under paragraph (h) above as approved by the Department, and allocation data developed by the Department.

(j) *Uses of leveraging incentive funds.* Funds awarded to grantees under the leveraging incentive program must be used to increase or maintain heating, cooling, energy crisis, and/or weatherization benefits as a part of the grantee's LIHEAP program. These funds can be used for weatherization without regard to the weatherization maximum in section 2605(k) of Public Law 97–35 (42 U.S.C. 8624(k)). However, they cannot be counted in the base for calculation of the weatherization maximum for regular LIHEAP funds authorized under section 2602(b) of Public Law 97–35 (42 U.S.C. 8621(b)). Leveraging incentive funds cannot be used for costs of planning and administration, or for transfer to other HHS block grants pursuant to section 2604(f) of Public Law 97–35 (42 U.S.C. 8623(f)). They can be counted in the base for calculation of maximum grantee planning and administrative costs under section 2605(b)(9) of Public Law 97–35 (42 U.S.C. 8624(b)(9)). They cannot be counted in the base for calculation of maximum grantee transfers or carryover of regular LIHEAP funds authorized under section 2602(b) of Public Law 97–35 (42 U.S.C. 8621(b)).

(k) *Period of obligation for leveraging incentive funds.* Leveraging incentive funds are available for obligation from the date they are awarded to a grantee until the end of the fiscal year following the fiscal year in which they were awarded, without regard to limitations on carryover of funds in section 2607(b)(2)(B) of Public Law 97–35 (42 U.S.C. 8626(b)(2)(B)). Any leveraging incentive funds not obligated for allowable purposes by the end of this period must be returned to the Department.

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federal register

Thursday
January 16, 1992

Part IV

Environmental Protection Agency

40 CFR Part 82

Stratospheric Ozone Protection: Significant New Alternatives Policy Program; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-4092-4]

RIN 2060-AD48

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for data and advance notice of proposed rulemaking.

SUMMARY: Today's notice presents the Environmental Protection Agency's (EPA, or the Agency) preliminary strategy for implementing section 612 of the Clean Air Act as amended in 1990 (CAA). Additionally, today's notice requests producers and formulators of substitutes for Class I ozone-depleting substances (i.e., chlorofluorocarbons, halons, methyl chloroform, and carbon tetrachloride) and Class II ozone-depleting substances (i.e., hydrochlorofluorocarbons), as well as substitute equipment manufacturers, to voluntarily provide EPA with information to facilitate the timely completion of risk characterizations on these substitutes. These risk characterizations will be conducted by EPA in early 1992 to implement the Safe Alternatives Policy under section 612. This new program will be entitled the Significant New Alternatives Policy (SNAP) program.

The Agency will use the results of the risk characterization to develop an initial list of prohibited substitutes specific to a use sector; a preliminary list of corresponding acceptable substitutes will also be identified. Any substitute not reviewed by the Agency prior to the promulgation of the rules implementing the SNAP program (required by November 15, 1992) will need to be submitted for review under the SNAP program once it becomes effective. The Agency believes that the conduct of risk characterizations prior to the statutory deadline is essential to meet the November deadline and to minimize any dampening effect that this section of the CAA may have on current industry efforts to phase out ozone-depleting substances.

DATES: Written comments on this notice must be submitted on or before March 2, 1992. Data submitted by the responder can be designated as confidential business information (CBI) under 40 CFR part 2, subpart B (see section VI for more detail).

ADDRESSES: Written comments should be sent to Docket A-91-42, Central Docket Section, South Conference Room 4, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 3:30 p.m. on weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. To expedite review, a second copy of the comments should be sent to Elaine Haemisegger, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR-445, 401 M Street SW., Washington, DC 20460. Information designated as confidential business information (CBI) under 40 CFR part 2, subpart B must be sent directly to the contact person for this notice.

FOR FURTHER INFORMATION CONTACT: Elaine Haemisegger at (202) 260-9961 or Nina Bonnelycke at (202) 260-1496, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR-445, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Overview of Today's Notice

Today's notice is divided into seven sections, including this overview:

II. Background

A. Regulatory History

On September 16, 1987, the United States and 23 other nations signed the Montreal Protocol. The original agreement set forth a timetable for reducing the production and consumption of specific ozone-depleting substances, including CFC-11, CFC-12, CFC-113, CFC-114, CFC-115, Halon-1211, Halon-1301, and Halon-2402. EPA implemented the original Protocol through regulations allocating production and consumption allowances equal to the total amount of production and consumption the United States was allowed under the Protocol (see final rule promulgated on August 12, 1988—53 FR 30566) and subsequent minor revisions and amendments promulgated on February 9 (54 FR 6376), April 3 (54 FR 13502), July 5 (54 FR 26062), and July 12 (54 FR 29337) of 1989, and February 13 (54 FR 5007), June 14 (55 FR 24490), and June 22 (55 FR 25812) of 1990.

The parties to the Montreal Protocol met in London on June 27-29, 1990 to consider amendments to the Protocol. In response to scientific evidence indicating greater than expected stratospheric ozone depletion, the Parties agreed to accelerate the phaseout schedules for the substances already controlled by the Protocol. They also added phaseout requirements for other ozone-depleting chemicals, including methyl chloroform, carbon tetrachloride, and other fully-halogenated chlorofluorocarbons (CFCs).

On November 15, 1990, Congress enacted the Clean Air Act Amendments of 1990. Title VI of the CAA requires a phaseout of CFCs, halons, and carbon tetrachloride by 2000, which is identical to the London Amendments, but with more stringent interim reductions. Title VI differs from the London Amendments by mandating a faster phaseout of methyl chloroform (2002 instead of 2005), a restriction on the use of hydrochlorofluorocarbons (HCFCs) after 2015, and a ban on the production of HCFCs after 2030. In title VI, the CFCs, halons, carbon tetrachloride, and methyl chloroform are defined as Class I substances; HCFCs are referred to as Class II substances. Appendix A lists the Class I and Class II substances.

In addition to the phaseout requirements, title VI includes provisions to reduce emissions of Class I and Class II substances to the "lowest achievable level" in all use sectors. It also requires EPA to: Ban nonessential products; establish standards and requirements for the servicing of motor vehicle air conditioners; mandate warning labels on products made with or containing Class I or Class II substances; and establish a safe alternatives program.

B. Subgroup of the Federal Advisory Committee

EPA has established a subgroup of the standing Stratospheric Ozone Protection Advisory Committee (STOPAC) to provide the Agency with guidance on the development of the safe alternatives program. In 1989, EPA organized the

STOPAC in accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. section 9(c). The STOPAC consists of members selected on the basis of their professional qualifications and diversity of perspectives and provides balanced representation from the following sectors: Industry and business; academic and educational institutions; Federal, state, and local government agencies; non-government and environmental groups; and international organizations. Since its formation, the STOPAC has provided advice and counsel to the Agency on policy and technical issues related to the protection of the stratospheric ozone layer.

In 1991, members were asked to participate in subgroups of the STOPAC to assist the Agency in developing regulations under title VI of the CAA. To date, the subgroup on safe alternatives has met once to review a detailed overview of EPA's ideas on implementation of section 612. At this meeting, there was general agreement on the need to develop a data request to provide the general public with an opportunity to provide the Agency with information on substitutes. The group supported the need to review substitutes as quickly as possible to avoid any slowdown in industry's efforts to phase out of ozone-depleting substances.

III. Section 612 Requirements

Section 612 requires EPA to develop a program for evaluating safe alternatives. EPA is referring to this new program as the Significant New Alternatives Program (SNAP). There are four major provisions of section 612, as summarized below.

A. Rulemaking

Section 612(c) requires EPA to enact rules by November 15, 1992 making it unlawful to replace any Class I or Class II substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where an alternative has been identified that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

B. Listing of Unacceptable Substitutes

Section 612(c) also requires EPA to publish a list of the substitutes prohibited for specific uses. EPA must also publish a list of acceptable alternatives for those prohibited substances.

C. Petition Process

Section 612(d) allows any person to petition EPA to add or delete a substance from the list published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. The petitioner must supply all information needed by the Agency to make a decision.

D. 90-day Notification

Any person who produces a chemical substitute for a Class I substance must notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a Class I substance. The producer must also provide the Agency with all unpublished health and safety studies on such substitutes.

IV. Implementation of Section 612

This section provides EPA's current thoughts regarding the implementation of section 612. This section discusses: Guiding principles for the SNAP program; the role of risk characterization in the SNAP program; the overlap between SNAP and the new chemicals review that is currently performed under section 5 of the Toxic Substances Control Act (TSCA); and the anticipated schedule for completing the proposed and final rulemaking for section 612. The Notice of Proposed Rulemaking for the SNAP program will develop the implementation strategy more fully.

A. Guiding Principles

EPA has identified several guiding principles it will consider in developing the SNAP program, as discussed below.

1. Evaluate Substitutes Within a Comparative Risk Framework

In evaluating each substitute, section 612 requires that the health and environmental risks be assessed comprehensively. This "overall risk" characterization will consider such factors as: Toxicity and exposure—both human health and ecological; chlorine loadings; ozone-depletion potential; global-warming potential; and flammability. To the extent possible, each of these factors will be quantified. The Agency does not believe that a scheme should be developed to numerically weight the risks quantified for each factor, thereby producing one index by which all substitutes can be ranked and evaluated. There are numerous complexities in the design of such a weighting scheme. Furthermore, a quantitative index may not allow for sufficient flexibility in making appropriate risk management decisions that may need to consider other issues, such as the quality of information, the degree of uncertainty in the data, the availability of other substitutes, and economic feasibility.

Economic feasibility must be assessed to ensure that the initial list of acceptable substitutes includes alternatives that are affordable in the near term. Economics must also be considered in evaluating new substitutes against alternatives that were previously identified as acceptable. The Agency believes that such an examination will help to minimize uncertainty in the marketplace and encourage many to substitute sooner rather than later.

2. Evaluate Substitute Risks in Context

Each substitute must be evaluated in the context of (1) the risks the substitute is replacing (i.e., the risks of continued use of the Class I of Class II substance) and (2) the risks from other substitutes.

3. Evaluate Risks by Use

Section 612 requires that substitutes be evaluated by use. Environmental and human health exposures can vary significantly depending on the particular application of a substitute. Thus, the risk characterizations must be designed to provide data on the environmental and human-health impacts associated with different use profiles.

4. Provide the Regulated Community with Information as Soon as Possible

While the SNAP regulation must be issued by November 15, 1992, the Agency recognizes the need to provide the regulated community with information on the acceptability of various substitutes as soon as possible. Given this need, EPA has decided to expedite the review process by conducting risk characterizations up front for those substitutes known to the Agency. The results of the risk characterizations will be used, as discussed in the next section, to make determinations regarding the acceptability of the substitutes. The initial lists of acceptable and prohibited substitutes will be published simultaneously with the proposed rulemaking for the SNAP program.

5. Develop Lists of Unacceptable Substitutes

The goal of the SNAP program is to prohibit substitutes that are "unacceptable." The Agency does not believe it is either feasible or appropriate to certify substitutes as "safe." The Agency also does not want to intercede in the choice of available substitutes, unless an acceptable substitute has been proposed or is being used.

6. Restrict Only Those Substitutes That Are Significantly Worse

EPA does not intend to restrict substitutes that are acceptable, but may be marginally worse on some criteria. Drawing fine distinctions concerning the acceptability of substitutes would be extremely difficult given the likely uncertainties that exist and the broad range of diverse impacts.

B. Risk Characterizations

This section reviews EPA's objectives in conducting the risk characterizations. It also describes the types of substitutes, factors, and use sectors that will be examined in the risk assessments.

1. Objectives

As mentioned earlier in this notice, the objectives in completing the risk characterizations are to: Disseminate information to industry as quickly as possible on acceptable substitutes; meet the statutory requirements and implementation deadline of November 15, 1992 for section 612; and help develop the analytical framework for evaluating substitutes under the SNAP program.

The Agency will use the results of the risk characterizations to prohibit unacceptable substitutes and to identify the corresponding acceptable substitutes. These determinations will be published simultaneously with the proposed and final regulations for the SNAP program. Any substitute not reviewed by the Agency prior to the promulgation of the rules implementing the SNAP program will need to be submitted for review under the SNAP program once it becomes effective. The Agency believes that the near-term risk assessment activities will support industry's ongoing phaseout efforts and will ensure the efficient implementation of the SNAP program. The risk characterizations will also help EPA specify more precisely the types of information that will need to be submitted to complete a substitute review under the SNAP program. EPA's preliminary assessment of data needs for the risk characterizations is included in today's notice (section V) and will be refined for inclusion in the Notice of Proposed Rulemaking for the SNAP program.

2. Substitutes To Be Evaluated

Based on the language included in the statement of policy in section 612 (a), the Agency believes that a substitute refers to any chemical, product substitute, or alternative manufacturing process that serves as a replacement for a Class I or Class II substance. While subsequent sections refer only to "substitute substances" or "substitute chemicals," EPA interprets these provisions in section 612 as incorporating the general definition of substitute presented in section 612 (a). Furthermore, section 612 (e) clearly states that a substitute can be either existing or new. This definition of a substitute should be used in responding to today's request for information on substitutes.

Section 612 (c) is also clear that a substitute may be currently or potentially available. However, the list of acceptable substitutes must include alternatives that are available in the near term to support and accelerate industry's ongoing efforts to phase out ozone-depleting substances.

3. Key Factors

The risk characterizations will address several factors, including: Chlorine loadings; ozone-depletion potential; toxicity to human health and ecosystems; air, water, and solid/hazardous waste impacts; exposure to workers, consumers, the general population, and ecosystems; flammability; and global warming potential. Where possible, these risk characterizations will quantify separately each of these endpoints. The risk assessments will also include information on the incremental costs and benefits associated with use of the substitutes.

4. Key Use Sectors

As discussed above, section 612 requires EPA to identify unacceptable substitutes by use category. To this end, the Agency will be developing risk characterizations for several key use sectors. For the purpose of today's notice, EPA is defining a use sector as an application in which an ozone-depleting substance is utilized. The most important uses of CFCs, HCFCs, halons, and methyl chloroform are found in:

- Automotive air conditioners
- Commercial air conditioning (e.g., reciprocating, screw, and centrifugal chillers)
- Home heat pumps and air conditioners
- Retail food refrigeration
- Cold storage warehouses
- Industrial process refrigeration (e.g., refineries, chemical plants, ice machines, and ice rinks)
- Refrigerated transport (e.g., rail cars and trucks)
- Household refrigerators and freezers
- Other household appliances (e.g., dehumidifiers)
- Solvent cleaning (e.g., any cleaning operation involving conveyorized vapor degreasing, open-top vapor degreasing, cold cleaning, and dry cleaning)
- Sterilization (e.g., hospitals, medical equipment, spice fumigant, pharmaceutical, commercial R&D labs, and libraries)
- Foam blowing (e.g., rigid polyurethane, rigid polyisocyanurate, flexible polyurethane, phenolic, polypropylene, polyethylene, polyolefin, PVC, and extruded polystyrene)
- Pesticide formulations
- Aerosols
- Adhesives
- Coatings and inks
- Fire extinguishing (e.g., portable halon fire-fighting units, total flooding halon extinguishing systems)

The majority of carbon tetrachloride (in excess of 97 percent) is consumed as a chemical feedstock, primarily for the production of CFC-11 and CFC-12. (1) The remaining small uses comprise such applications as: Scrubbing liquid to recover chlorine following liquefaction, a diluent for nitrogen trichloride; processing solvent for waxes, oils, and paraffins; manufacture of some drugs and lubricants; and the processing of uranium salts and metal alloys. EPA also requests information on (1) applications or uses of Class I and Class II substances that have not been identified in either section IV.B.4 or table 1 and (2) substitutes not listed in table 1.

These uses were analyzed in the regulatory impact analysis (RIA) that EPA completed to support the phaseout under the Clean Air Act and will serve as a starting point for the SNAP program. (2) Depending on the substitute and exposure information received in response to today's notice, these use-sector designations may be either aggregated or disaggregated. Furthermore, several use scenarios may be added.

C. SNAP/Premanufacture Notice (PMN) Overlap

For a new chemical, the regulatory requirements under section 5 of the Toxic Substances Control Act (TSCA) remain unchanged. Thus, EPA is considering that any new chemical—defined as any substance not currently on the TSCA inventory—will be subject to review both under section 5 of TSCA and section 612 of the CAA. To expedite review under TSCA and CAA, EPA is developing a joint review process. This process will satisfy the statutory requirements of both laws and will ensure consistency in decisions reached under SNAP and the premanufacture

notice review program for new chemicals. The Notice of Proposed Rulemaking for Section 612 will provide more detail on the interface between SNAP and the new-chemical review under TSCA.

D. Schedule for Rulemaking

EPA is planning to issue a notice of proposed rulemaking for the SNAP program by early 1992. This proposal will also include an initial list of acceptable and unacceptable substitutes based on the results of the risk characterizations. The final rule for the SNAP program will be issued in the fall of 1992. At this time, EPA will also publish its revised list of prohibited and acceptable substitutes. Any substitute not reviewed by the Agency prior to the promulgation of the rules implementing the SNAP program will need to be submitted for review under the SNAP program once it becomes effective.

V. Data Requested

A. Objective

As mentioned above, the purpose of today's notice is to elicit the voluntary submission of information on substitutes for Class I or Class II substances. Listed below are the specific types of data that will be helpful to the Agency in completing the risk characterizations. However, any available data on these factors will be considered by the Agency. Data submitted in response to this voluntary request can be designated as confidential business information (CBI) under 40 CFR, part 2, subpart B (see section VI for more detail).

B. Responders

For the purpose of today's notice, the Agency is inviting all producers and formulators of Class I or Class II substitute products, chemicals, and processes, as well as equipment manufacturers, to submit readily available data on alternatives. If respondents are aware of submissions that are being made by their trade associations in response to today's notice, and this information sufficiently addresses substitutes that they are using, there is no need for additional data to be submitted. Moreover, users of Class I and II substances that believe they have a unique or unusual substitute that is not being supplied to them expressly for use as a Class I or II substitute are requested to report this information.

To minimize the amount of reporting, the Agency has identified, by use sector, those substitutes for which it has already collected data (see table 1). EPA invites respondents to submit information on the substitutes listed in table 1 if the respondent has new information. It also requests information on (1) applications or uses of Class I and Class II substances that have not been identified in either Section IV.B.4 or table 1 and (2) substitutes not listed in table 1. There is no need to resubmit information that has already been sent to EPA's Office of Air and Radiation or Office of Toxic Substances as part of past CFC-related activities or is contained in several reports referenced at the end of today's notice. If there are any questions regarding the submission of information, the respondent is encouraged to telephone the EPA contact for this notice (see "For Further Information Contact" at the beginning of today's notice).

Data received in response to today's advance notice will be considered by EPA in its initial review of substitutes for Class I and Class II substances. The notice of proposed rulemaking on the SNAP program, which is anticipated in early 1992, will provide the public with another opportunity to provide the Agency with information on alternatives.

C. Information Needs

The Agency is requesting submitters to voluntarily provide information on the following topics to assist in examining substitutes under the SNAP program:

- *Name and description of the substitute.* To the extent possible, the substitute should be identified by its (1) commercial name, (2) chemical name, (3) trade name(s), (4) identification numbers (e.g. CAS registry, NIOSH RTECS, EPA hazardous waste, OHM–TADS, DOT/UN/NA/IMCO shipping, HSDB, NCI), (5) chemical formula, and (6) chemical structure.
- *Physical and chemical information.* Key properties that should be included to characterize the substitute are: molecular weight; physical state; melting point; boiling point; density; odor threshold' solubility; partition coefficients (Log K_{ow}, Log K_{oc}); vapor pressure; Henry's Law Constant.
- *Flammability concerns.* Data on the flammability of a substitute chemical or mixture are requested. Specifically, data on flash point and flammability limits are needed, as well as information on the procedures used for determining the flammability limits. Detail on any abatement techniques to minimize the risks associated with the use of flammable substances or mixtures is also helpful.
- *Toxicity data.* Information on the human health and ecological toxicity of substitute chemicals is needed, such as the Material Safety Data Sheet. Any data characterizing both acute and chronic effects are useful.
- *Ozone-depletion potential.* The Agency is interested in obtaining information on the ozone-depletion potential of the substitute chemicals, if readily available.
- *Global-warming potential.* Similarly, the Agency is also interested in readily available data on the total global-warming potential of the substitute chemicals.
- *VOC status.* Information on whether the substitutes would be regulated as volatile organic compounds (VOCs) under title I of the CAA is requested. VOCs are of concern because of their potential to contribute to the formation of ground-level ozone.
- *Substitute applications.* Identification of the applications in which the substitutes are likely to be used is needed. The respondent can utilize the use sector designations found in section IV.B. 4. of today's notice or can provide more detail if appropriate.
- *Anticipated market share.* Data on the anticipated sales of the substitute are useful. In addition, information on the expected quantity of the substitute sold by use sector (e.g., number of units/products or pounds of substitute) over the next five years would be helpful.
- *Availability of substitute.* The Agency needs to understand the extent to which a substitute is already commercially available or the expected date at which it may become commercially available.
- *Cost of substitute.* The cost of the substitute can be expressed, for example, in terms of $/pound (a chemical substitute) or as capital and operating costs, as well as expected equipment lifetime, for an alternative technology. Other critical cost considerations should be identified, as appropriate. For example, relative to current uses of Class I or II substances, it is important to understand the incremental costs associated with losses or gains in energy efficiency associated with use of a substitute.
- *Required changes in technology.* Detail on the changes in technologies needed to use the alternative substance is requested. In particular, the Agency is requesting information on whether the substitute can be used in existing equipment—with or without changes—or in new equipment. Data on the cost (capital and operating) and estimated life of the technology should also be submitted.
- *Relative effectiveness of the substitute.* The Agency is requesting information on the relative effectiveness

of the substitute versus the Class I or II substances being replaced. For example, in the case of a degreasing agent, is relatively more or less of the substitute chemical needed? This will have an impact on the incremental cost and environmental effects associated with use of the substitute.

• *Environmental release data.* Available data on emissions from the substitute application and equipment, as well as pollutant releases or discharge to all environmental media (ambient air, surface water, hazardous/solid waste), are needed to complete the risk characterization. Any information on any pollution controls used or that could be used in association with the substitute (e.g., emissions reduction technologies, wastewater treatment, treatment of hazardous waste) and the costs of such technology is also requested.

• *Exposure data.* Where available, the Agency is requesting extant modeling or monitoring data on exposures associated with the manufacture, formulation, transport, and use of a substitute. Descriptive information on the processing and use of the substitutes would also be helpful, especially where quantitative modeling or monitoring data are not readily available. Depending on the application, exposure profiles will be needed for workers, consumers, and the general population.

Individuals responding to today's notice are requested to provide the Agency with information on any additional factors that the submitter believes EPA should consider in its risk characterization of particular substitutes and use sectors.

VI. Confidential Business Information

Anyone submitting information must assert a claim of confidentiality at the time of submission for any data it wishes to have treated as confidential business information (CBI) under 40 CFR, part 2, subpart B. Failure to assert a claim of confidentiality at the time of submission may result in disclosure of the information by the Agency without further notice.

The Bruce Company, ICF Incorporated, Radian Corporation, and Meridian Incorporated are hereby designated as Authorized Representatives of the Administrator of the United States Environmental Protection Agency (EPA) for the purpose of assisting EPA in the development and the implementation of national regulations for the protection of stratospheric ozone, including the development of the Significant New Alternatives Policy Program under section 612 of the Clean Air Act.

The Authorized Representatives, under EPA Contract 68–D9–0068 may have access to any information received by the Global Change Division within the EPA Office of Atmospheric and Indoor Air Programs for use in reviewing the need for possible control of any substance, practice, process or activity that may reasonably be anticipated to affect stratospheric ozone. In general, this information will pertain to the feasibility, costs, and environmental and health impacts of using substitutes for Class I and Class II substances. Access to such information is necessary to ensure that the Bruce Company, ICF Incorporated, Radian Corporation, and Meridian Incorporated can complete the work required by the contract.

Authorized Representatives of the Administrator are subject to the provisions of 42 U.S.C. 7414(c) respecting confidential business information as implemented by 40 CFR 2.301(h).

VII. Paperwork Reduction Act

The information collection provisions in today's notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and has been assigned OMB control number 2060–0226.

The public-reporting burden for this one-time voluntary collection of information is estimated to average 16 hours per response. This estimate includes the time needed to search existing sources, gather and review the needed information, and prepare the package for submission to EPA. The estimated number of respondents is approximately 170, and the estimated total annual burden on respondents is 2,720 hours.

Dated: January 7, 1992.

William K. Reilly,

Administrator.

References

1. U.S. EPA, *Carbon Tetrachloride,* Working Paper, Office of Atmospheric and Indoor Air Programs.

2. U.S. EPA, *Costs and Benefits of Phasing Out Production of CFCs and Halons in the United States,* Review Draft, Office of Air and Radiation, November 3, 1989.

3. U.S. EPA, *Hydrofluorocarbons and Hydrochlorofluorocarbons: Interim Report,* External Review Draft, Office of Toxic Substances, November 15, 1990.

4. U.S. EPA, *Aqueous and Terpene Cleaning: Interim Report,* External Review Draft, Office of Toxic Substances, November 15, 1990.

5. U.S. EPA, *Analysis of the Environmental Implications of the Future Growth in Demand for Partially Halogenated Chlorinated Compounds,* Office of Air and Radiation, EPA 400/1–90–001, January 1990.

TABLE 1.—POSSIBLE ALTERNATIVES BEING CONSIDERED FOR REVIEW UNDER THE SIGNIFICANT NEW ALTERNATIVES POLICY (SNAP) PROGRAM

- Automotive Air Conditioners:
  - a. Chemical Substitutes:
    - HFC–134a, HCFC–22, HFC–152a, HCFC–22/HFC–152a/HCFC–124, HCFC–22/HFC–152a/CFC–114 (interim), cyclopropane
  - b. Alternative Technologies:
    - Absorption, air cycles, evaporative cooling, stirling cycle
- Commercial Air Conditioning:
  - a. Chemical Substitutes:
    - CFC–11 centrifugal chillers—HCFC–123, E–245
    - CFC–114 centrifugal chillers—HCFC–124, E–134
    - CFC–12 centrifugal chillers—HFC–134a
    - CFC–500 centrifugal chillers—HFC–134a, HFC–152a, HCFC–22/HFC–152a/HCFC–124
    - CFC–12 reciprocating chillers—HFC–134a, HCFC–22, HFC–152a, HCFC–22/HFC–152a/HCFC–124
    - HCFC–22 centrifugal reciprocating, and screw chillers—HFC–134a, HFC–32, HFC–32/HFC–125, ammonia
  - b. Alternative Technologies:
    - HFC–134a screw, HFC–134a centrifugal absorption, lithium bromide absorption, ammonia-water absorption, HCFC–22 screw, HCFC–22 reciprocating, HCFC–22 centrifugal
- Home Heat Pumps and Air Conditioners:
  - a. Chemical Substitutes:
    - HFC–134a, HFC–32, HFC–125, HFC–152a, HCFC–124, HFC–143a, HFC–32/HFC–134a, HFC–32/HFC–152a, HFC–32/HFC–125, HFC–32/HFC–134a/HFC–152a, HFC–32/HFC–143a, HFC–32/HFC–134a/HFC–152a/HFC–125, propane, butane, fluoroethers
  - b. Alternative Technologies:
    - Lithium bromide absorption, ammonia absorption, evaporative cooling
- Retail Food Refrigeration:
  - a. Chemical Substitutes:
    - Low temperature—HCFC–22, HFC–125, HFC–32, HFC–32/HFC–125, HCFC–22/propane/perfluoropropane, HCFC–22/propane/HFC–125 Medium/high temperature—HFC–134a, HFC–152a, HCFC–22, HCFC–22/HFC–152a/HCFC–124, HFC–32/HFC–125/HFC–152a, HFC–32/HFC–134a, fluoroethers, butane
  - b. Alternative Technologies:
    - Ammonia/brine system, stirling cycle
- Cold Storage Warehouses:
  - a. Chemical Substitutes:
    - Low temperature—HCFC–22, HFC–125, HFC–32, HFC–32/HFC–125, HCFC–22/propane/perfluoropropane, HCFC–22/propane/HFC–125, ammonia
    - Medium/high temperature—HFC–134a, HFC–152a, HCFC–22/HFC–152a/HCFC–124, HFC–32/HFC–125/HFC–152a, HFC–32/HFC–134a, fluoroethers, butane
  - b. Alternative Technologies:
    - Ammonia/brine system, stirling cycle
- Industrial Process Refrigeration:
  - a. Chemical Substitutes:

TABLE 1.—POSSIBLE ALTERNATIVES BEING CONSIDERED FOR REVIEW UNDER THE SIGNIFICANT NEW ALTERNATIVES POLICY (SNAP) PROGRAM—Continued

HCFC-22, HFC-134a, HFC-152a, HCFC-123, HCFC-22/HFC-152a/HCFC-124, HCFC-22/HFC-152a/CFC-114 (interim), HFC-32/HFC-125, propane, cyclopropane, ethane, butane, propylene, ammonia, chlorine

b. Alternative Technologies:
Ammonia/brine

Refrigerated Transport:
a. Chemical Substitutes:
HCFC-22, HFC-32, HFC-134a, HCFC-22/HFC-152a/HCFC-124, HCFC-22/HFC-152a/CFC-114 (interim), propane, cyclopropane, fluoroethers
b. Alternative Technologies:
Stirling cycle, liquid carbon dioxide, nitrogen

Household Refrigerators and Freezers:
a. Chemical substitutes:
HFC-134a, HFC-152a, HCFC-22, HCFC-22/HFC-152a/HCFC-124, HCFC-22/HCFC-142b, propane, cyclopropane, sulphur dioxide, dimethyl ether, fluoroethers, ammonia
b. Alternative Technologies:
Stirling cycle, absorption (ammonia-water), Lorenz cycle/near azeotropic refrigerant mixtures (NARMs), e.g., HCFC-22/HCFC-141b, HCFC-22/HCFC-123, dual loop cycle/mixtures (e.g., HFC-152a/HCFC-142b)

Other Household Appliances:
a. Chemical Substitutes:
HFC-134a, HCFC-22, HFC-152a, HCFC-22/HFC-152a/HCFC-124, HCFC-22/HCFC-142b, propane, cyclopropane, sulphur dioxide, ammonia
b. Alternative Technologies:
Stirling cycle, absorption

Solvent Cleaning:
a. Substitutes for the currently used controlled substances (CFC-113, MCF):
HCFC-123, HCFC-141b, HCFC-225ca, HCFC-225cb, HCFC-141b/methanol, aqueous, hydrocarbon-surfactant, alcohols, hydrocarbons, terpenes, N-methyl pyrrolidone, esters, ketones, white spirit, perfluoroalkanes, terpene alcohols, pentafluoropropanol, glycol ethers, petroleum distillates, glycol ether acetates, fluoroethers, 1,1-dichloroethane, perchloroethylene, trichloroethylene, methylene chloride
b. Alternative Technologies:
No-clean fluxes, plasma cleaning, ice particles, thermal vacuum deoiling, supercritical fluids, controlled atmosphere soldering, pressurized gases, ultraviolet light/ozone cleaning, low-solid fluxes, no-clean solder pastes, steam cleaning, solderability preservatives (organic, polymeric, and metallic), reactive gas soldering, conductive adhesives, organic acid fluxes

Sterilization:
a. Substitutes for CFC-12, currently used as a carrier for ethylene oxide:
HCFC-124, HFC-125, HFC-134a, carbon dioxide, nitrogen
b. Alternative Technologies:
Steam, dry heat, pure ethylene oxide, formaldehyde, peracetic acid, glutaraldehyde, chlorine dioxide, gaseous ozone, vapor phase hydrogen peroxide, ionized gas plasma, selective component sterilization, radiation, disposables

Foam Blowing—Polyurethane, Flexible Slabstock:
a. Substitutes for the currently used controlled substance (CFC-11):
HCFC-141b, HCFC-123, methylene chloride, increased water, acetone, methyl chloroform (interim), AB technology, liquid carbon dioxide
b. Alternative Technologies:
New polyol technologies
c. Alternative products:
Fiberfill, natural latex foams, polyester batting

Foam Blowing—Polyurethane, Flexible Molded:
a. Substitutes for the currently used controlled substance (CFC-11):
HCFC-123, HCFC-141b, increased water, methylene chloride, methyl chloroform (interim)
b. Alternative Technologies:
New polyol technologies

Foam Blowing—Polyurethane, Rigid Appliance Insulation:
a. Substitutes for the currently used controlled substances (CFC-11 and CFC-12):
HCFC-123, HCFC-141b, HCFC-22, HFC-152a, HFC-134a, HFC-125, HCFC-123/HCFC-141b, HCFC-22, HCFC-142b, carbon dioxide from increased water, 100% carbon dioxide, perfluoroalkanes, fluorinated ethers, pentane, isopentane, hexane, partially fluorinated alkanes, all-water-blown systems, air
b. Alternative Products:
Fiberglass, vacuum panels

Foam Blowing—Polyurethane/Polyisocyanurate Rigid Laminated Insulation:
a. Substitutes for the currently used controlled substances (CFC-11 and CFC-12):
HCFC-123, HFC-152a, HFC-125, HCFC-141b, HCFC-22, HCFC-123/HCFC-141b, HCFC-22/HCFC-142b, 2-chloropropane, perfluoroalkanes, 100% carbon dioxide, carbon dioxide from increased water, partially fluorinated alkanes, air
b. Alternative Products:
Expanded polystyrene, fiberboard, fiberglass

Foam Blowing—Polyurethane Rigid Spray-Applied, Slabstock, and Poured-in-place:
a. Substitutes for the currently used controlled substances (CFC-11 and CFC-12):
HCFC-123, HCFC-141b, HCFC-22, HFC-152a, HFC-134a, HCFC-123/HCFC-141b, carbon dioxide from increased water, 100% carbon dioxide (all-water-blown), pentane, isopentane, partially fluorinated alkanes, air
b. Alternative Products:
Fiberglass, expanded polystyrene, etc.

Foam Blowing—Polyurethane Integral Skin and Miscellaneous
a. Substitutes for the currently used controlled substance (CFC-11):
HCFC-22, HCFC-123, HCFC-141b, isopentane, pentane, butane, methylene chloride, air, water, acetone, partially fluorinated alkanes, perfluorinated alkanes

Foam Blowing—Phenolics:
a. Substitutes for the currently used controlled substances (CFC-11, CFC-113):
HCFC-141b, HCFC-123, HFC-134a, HFC-152a, HCFC-22/HCFC-142b, pentane
b. Alternative Products:
Fiberglass, expanded polystyrene, etc.

Foam Blowing—Polystyrene Extruded Boardstock
a. Substitutes for currently used controlled substances (CFC-12):
HCFC-22, HCFC-142b, HFC-134a, HCFC-124, HFC-152a, hydrocarbons
b. Alternative Products:
Expandable polystyrene, fiberboard

Foam Blowing—Extruded Sheet:
a. Substitutes for currently used controlled substance (HCFC-22)
HFC-152a, HFC-134a, carbon dioxide, n-pentane, butane, isopentane, isobutane

Foam Blowing, Polyolefin:
a. Substitutes for currently used controlled substances (CFC-11, CFC-12, CFC-114):
HCFC-22, HCFC-142b, HCFC-141b, HCFC-123, HCFC-124, HFC-134a, HFC-152a, butane, aliphatic hydrocarbons, ketones, methylene chloride
b. Alternative Products:
Paper, cardboard, expanded polystyrene

Pesticide Formulations:
a. Substitutes for CFC-113 and MCF, controlled substances currently used as inerts:
HCFCs, water-based with hydrocarbons, methylene chloride, trichloroethylene, perchloroethylene
b. Alternative Technologies:
Alternative application methods

Aerosols/Pressurized Containers:
a. Substitutes for the currently used controlled substances (CFC-11, CFC-12, CFC-113, CFC-114, MCF):
HFC-125, HCFC-124, HFC-134a, HCFC-123, HCFC-22, HCFC-123/HCFC-141b, HCFC-22/HCFC-142b, HCFC-22/HFC-152a, water-based formulations, isopropyl alcohol, methylene chloride, acetone, ethanol, petroleum distillates, isobutane/propane, carbon dioxide, nitrogen, compressed air, perchloroethylene, propane, isobutane, n-butane, alcohols, ketones, esters, chlorinated solvents
b. Alternative Technologies:
Alternative delivery systems (e.g., pumps and pistons)

Adhesives:
a. Substitutes for MCF, currently used as a solvent in the adhesive formulation:
Petroleum distillates, methylene chloride, ketones, esters, terpenes, glycol ethers, glycol esters, perchloroethylene, glycol ether acetates, hydrocarbon solvents, water-based solvents
b. Alternative Technologies:
Hot melt, high-solids, uv-curable

Coatings and inks:
a. Chemical Substitutes:
Petroleum distillates, methylene chloride, ketones, esters, terpenes, glycol ethers, glycol esters, diluents, terpene alcohols, binders, perchloroethylene, glycol ether acetates, hydrocarbon solvents
b. Alternative technologies for current formulations containing MCF as solvent:
Water-based formulations, high-solids, high transfer efficiency, thermoplastics, powder coatings, radiation curing

Fire Extinguishing:
a. Chemical Substitutes:
Halon 1211—bromodifuoromethane (interim), HCFC-22, HCFC-123, HFC-23, HCFC-124, HFC-125, HCFC-123/HCFC-142b, HCFC-123/HCFC-22, HCFC-123/HFC-23, HCFC-123/HCFC-124, heptafluoropropane, heptafluoropropane/bromodifluoromethane, water, aqueous film-forming foam, CO_2, perfluorinated butane, dry chemical

TABLE 1.—POSSIBLE ALTERNATIVES BEING CONSIDERED FOR REVIEW UNDER THE SIGNIFICANT NEW ALTERNATIVES POLICY (SNAP) PROGRAM—Continued

Halon 1301—bromodifluoromethane (interim), HFC–125, heptafluoropropane, bromodifluoromethane/heptafluoropropane, water, CO_2, CO_2/water hybrid, perfluorinated butane

EPA may evaluate some of the substitutes listed above under its Significant New Alternatives Policy (SNAP) Program. Because this evaluation is not yet complete, no conclusions should be drawn about the acceptability of any of these substitutes.

Appendix A

Section 602: Listing of

Class I and Class II Substances

Clean Air Act Amendments of 1990

Class I Substances

Group I

chlorofluorocarbon-11 (CFC-11)
chlorofluorocarbon-12 (CFC-12)
chlorofluorocarbon-113 (CFC-113)
chlorofluorocarbon-114 (CFC-114)
chlorofluorocarbon-115 (CFC-115)

Group II

halon-1211
halon-1301
halon-2402

Group III

chlorofluorocarbon-13 (CFC-13)
chlorofluorocarbon-111 (CFC-111)
chlorofluorocarbon-112 (CFC-112)
chlorofluorocarbon-211 (CFC-211)
chlorofluorocarbon-212 (CFC-212)
chlorofluorocarbon-213 (CFC-213)
chlorofluorocarbon-214 (CFC-214)
chlorofluorocarbon-215 (CFC-215)
chlorofluorocarbon-216 (CFC-216)
chlorofluorocarbon-217 (CFC-217)

Group IV

carbon tetrachloride

Group V

methyl chloroform

Class II Substances

hydrochlorofluorocarbon-21 (HCFC-21)
hydrochlorofluorocarbon-22 (HCFC-22)
hydrochlorofluorocarbon-31 (HCFC-31)
hydrochlorofluorocarbon-121 (HCFC-121)
hydrochlorofluorocarbon-122 (HCFC-122)
hydrochlorofluorocarbon-123 (HCFC-123)
hydrochlorofluorocarbon-124 (HCFC-124)
hydrochlorofluorocarbon-131 (HCFC-131)
hydrochlorofluorocarbon-132 (HCFC-132)
hydrochlorofluorocarbon-133 (HCFC-133)
hydrochlorofluorocarbon-141 (HCFC-141)
hydrochlorofluorocarbon-142 (HCFC-142)
hydrochlorofluorocarbon-221 (HCFC-221)
hydrochlorofluorocarbon-222 (HCFC-222)
hydrochlorofluorocarbon-223 (HCFC-223)
hydrochlorofluorocarbon-224 (HCFC-224)
hydrochlorofluorocarbon-225 (HCFC-225)
hydrochlorofluorocarbon-226 (HCFC-226)
hydrochlorofluorocarbon-231 (HCFC-231)
hydrochlorofluorocarbon-232 (HCFC-232)
hydrochlorofluorocarbon-233 (HCFC-233)
hydrochlorofluorocarbon-234 (HCFC-234)
hydrochlorofluorocarbon-235 (HCFC-235)
hydrochlorofluorocarbon-241 (HCFC-241)
hydrochlorofluorocarbon-242 (HCFC-242)
hydrochlorofluorocarbon-243 (HCFC-243)
hydrochlorofluorocarbon-244 (HCFC-244)
hydrochlorofluorocarbon-251 (HCFC-251)
hydrochlorofluorocarbon-252 (HCFC-252)
hydrochlorofluorocarbon-253 (HCFC-253)
hydrochlorofluorocarbon-261 (HCFC-261)
hydrochlorofluorocarbon-262 (HCFC-262)
hydrochlorofluorocarbon-271 (HCFC-271)

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federal register

Thursday
January 16, 1992

Part V

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-4092-5]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document EPA proposes regulations to ban nonessential products releasing class I ozone-depleting substances and require the elimination of emissions from products using class I substances under sections 610 and 608 of the Clean Air Act, as amended. The substances affected by this proposed rulemaking include chlorofluorocarbons (CFCs) and halons.

DATES: If requested by January 23, 1992, EPA will hold a public hearing on this notice on January 31, 1992. The contact person listed below may be called regarding a hearing. Written comments on this notice must be submitted on or before February 18, 1992, if the hearing is not held, or March 2, 1992, if the hearing is held.

ADDRESSES: Comments should be submitted in duplicate to the attention of Air Docket No. A–91–39 at: U.S. Environmental Protection Agency (LE–131), 401 M Street, SW., Washington, DC 20460. The Docket is located in room M–1500, first floor, Waterside Mall and materials relevant to this rulemaking may be inspected from 8:30 a.m. to 12 noon and from 1:30 to 3:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel Blank at (202) 260–8894, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR–445, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview of the Problem

The stratospheric ozone layer protects the earth from the penetration of harmful ultraviolet (UV-B) radiation. A national and international consensus has developed that certain industrially produced halocarbons (including chlorofluorocarbons (CFCs), halons, carbon tetrachloride and methyl chloroform) can transport chlorine and bromine to the stratosphere and there contribute to the depletion of the ozone layer. To the extent depletion occurs, penetration of UV-B radiation increases, resulting in potential health and environmental harm including increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to crops and aquatic organisms, increased formation of ground-level ozone and increased weathering of outdoor plastics.

B. Aerosol Ban in 1978

Following initial concerns raised by research scientists Molina and Rowland in 1974 regarding possible ozone depletion from CFCs, EPA and the Food and Drug Administration (FDA) acted on March 17, 1978 (43 FR 11301; 43 FR 11318) to ban the use of CFCs as aerosol propellants in all but "essential applications." During the mid-1970s, use as aerosol propellants constitute over 50 percent of total CFC consumption in the United States. The 1978 ban reduced aerosol use of CFCs in this country by approximately 95 percent, eliminating nearly half of the total U.S. consumption of these chemicals

Some CFC aerosol products were specifically exempted from the ban based on a determination of "essentiality." (See reference Essential Use Determinations-Revised, 1978.) Other pressurized dispensers containing CFCs were excluded from the ban because they did not fit the narrow definition of "aerosol propellant."

In the years following the aerosol ban, CFC use increased significantly in the refrigeration, foam and solvent-using industries. By 1985, CFR use in the United States had surpassed pre-1974 levels and represented 29 percent of total global CFC consumption.

C. Montreal Protocol

EPA evaluated the risks of ozone depletion in Assessing the Risks of Trade Gasses That Can Modify the Stratosphere (1987) and concluded that an international approach was necessary to effectively safeguard the ozone layer. Because releases of CFCs from all areas mix in the atmosphere to affect stratospheric ozone globally, it became clear that efforts to reduce emissions from specific products by only a few nations could quickly be offset by increases in emissions from other nations, leaving the risks to the ozone layer unchanged.

Recognizing the global nature of this issue, EPA participated in negotiations organized by the United Nations Environment Program (UNEP) to develop an international agreement to protect the ozone layer. In September 1987, the United States and 22 other countries signed the Montreal Protocol on Substances that Deplete the Ozone Layer. The 1987 Protocol called for a freeze in the production and consumption (defined as production plus imports minus exports of bulk chemicals) of CFC–11, –12, –113, –114, –115, and halon 1211, 1301 and 2402 at 1986 levels, and a phased reduction of the CFCs to 50 percent of 1986 levels by 1998. Currently, 71 nations representing over 90 percent of the world's consumption are party to the Protocol.

In its August 12, 1988 final rulemaking (53 FR 30566) EPA promulgated regulations implementing their requirements of the 1987 Protocol through a system of tradable allowances. EPA apportioned these allowances to producers and importers of these "controlled substances" based on their 1986 levels. To monitor industry's compliance with the production and consumption limits, EPA required recordkeeping and quarterly reporting and conducted periodic compliance reviews and inspections.

D. Excise Tax

As part of the Omnibus Budget Reconciliation Act of 1989, the United States Congress levied an excise tax on the sale of CFCs and other chemicals which deplete the ozone layer, with specific exemptions for exports and recycling. The tax went into effect on January 1, 1990 and has operated as an extremely useful complement to EPA's regulations limiting production and consumption. By raising the costs of using virgin controlled substances, the tax has created an added incentive for industry to shift out of these substances and increase recycling activities, and provided a market for alternative chemicals and processes. The original excise tax was amended by the Internal Revenue Service (IRS) in 1991 to include methyl chloroform, carbon tetrachloride and the other CFCs regulated by the amended Montreal Protocol and title VI of the Clean Air Act Amendments of 1990.

E. London Amendments to the Montreal Protocol

In response to overwhelming scientific evidence of increased stratospheric ozone depletion, the Parties to the Protocol passed amendments and adjustments at their second meeting held in London on June 29, 1990 which called for a full phase-out of the regulated CFCs and halons by 2000, a phase-out of carbon tetrachloride and "other CFCs" by 2000 and a phase-out of methyl chloroform by 2005. The Parties also passed a non-binding resolution regarding the use of hydrochlorofluorocarbons (HCFCs) as

interim substitutes for CFCs. Partially halogenated HCFCs add much less chlorine to the stratosphere than the fully halogenated CFCs, but still pose some threat to the ozone layer. (See 56 FR 2420; January 22, 1991 for more information on the relative effects of different ozone-depleting substances.

F. Clean Air Act Amendments of 1990, Title VI

On November 15, 1990 the Clean Air Act Amendments of 1990 were signed into law. The requirements in new title VI include phase-out controls similar to those in the London Amendments, although interim targets are more stringent and the phase-out date of methyl chloroform is earlier. Unlike the amended Montreal Protocol, the Clean Air Act also requires regulations restricting the uses of controlled ozone-depleting substances, including provisions to reduce emissions of controlled substances to the "lowest achievable level" in all use sectors, to ban nonessential products, to mandate warning labels, and to establish a safe alternatives program.

G. Subgroup of the Federal Advisory Committee

In the development of this proposed regulation, EPA was assisted by a subgroup of the standing Stratospheric Ozone Protection Advisory Committee (STOPAC). In 1989, EPA established the STOPAC in accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 9(c). The STOPAC consists of members selected on the basis of their professional qualifications and diversity of perspectives and provides balanced representation from the following sectors: Industry and business; academic and educational institutions; Federal, state and local government agencies; non-government and environmental groups; and international organizations. Since its formation, the STOPAC has provided advice and counsel to the Agency on policy and technical issues related to the protection of the stratospheric ozone layer.

In 1990, members were asked to participate in subgroups of the STOPAC to assist the Agency in developing regulations under the new requirement of title VI of the Clean Air Act Amendments of 1990. To date, the Subgroup on Nonessential Products has met twice, reviewing two in-depth briefing packets (contained in Docket A-91-39) and offering comments and technical expertise on the development of today's proposed rule.

II. Requirements Under Section 610

A. Class I Products

Title VI of the Clean Air Act as amended divides the controlled ozone-depleting chemicals into two distinct classes. Class I is comprised of CFCs, halons, carbon tetrachloride and methyl chloroform. Class II is comprised of HCFCs. (See listing notice January 22, 1991; 56 FR 2420.)

Section 610(b) of the Act requires EPA to "identify nonessential products that release class I substances into the environment (including any release during manufacture, use, storage, or disposal) and prohibit any person from selling or distributing any such product, or offering any such product for sale or distribution, in interstate commerce."

Section 610(b) (1) and (2) specify products to be prohibited under this requirement, including "chlorofluorocarbon-propelled plastic party streamers and noise horns" and "chlorofluorocarbon-containing cleaning fluids for noncommercial electronic and photographic equipment."

Section 610(b)(3) further requires EPA to include in the prohibition at a minimum "other consumer products" that are determined by EPA to release class I substances and to be nonessential. In determining whether a product is nonessential, EPA is instructed to consider the following criteria: "The purpose or intended use of the product, the technological availability of substitutes for such product and for such class I substance, safety, health, and other relevant factors."

Final regulations for the class I products are required by section 610 to be promulgated within one year after enactment of the Clean Air Act Amendments of 1990 (November 15, 1991) and to take effect 24 months after enactment (November 15, 1992). While final regulations implementing section 610(b) will be published shortly after the statutory deadline, the effective date required by section 610(c) remains unchanged.

B. Class II Products

Section 610(d)(1) states that after January 1, 1994, "it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce—(A) any aerosol product or other pressurized dispenser which contains a class II substance; or (B) any plastic foam product which contains, or is manufactured with, a class II substance." Section 610(d)(2) authorizes EPA to grant exceptions to the class II ban in certain circumstances.

EPA believes that, unlike the class I ban, the class II ban is self-executing and that consequently EPA is not required to promulgate regulations within one year of enactment under section 610 to implement the class II ban. Section 610(d) bans the sale of the specified class II products by its own terms, without any reference to required regulations. Section 610(c), on the other hand, bans only the sale of nonessential class I products to which the Administrator's regulations issued under section 610(a) implementing section 610(b) apply.[1] EPA believes it has the authority to issue regulations as necessary to implement the class II ban under sections 610 and 301 of the Clean Air Act, as amended, and intends to do so at a later date to establish a procedure for granting exceptions under 610(d)(2). EPA intends to collect more specific information on the use of Class II substances in foams and aerosols in the near future.

C. Medical Products

Section 610(e) states that "nothing in this section shall apply to any medical devices as defined in section 601(8)." Section 601(8) defines "medical device" as "any device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system—(A) if such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner of the Food and Drug Administration; and (B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator."

No medical products as defined above are included in the provisions of today's proposal, but regulation of medical products may be considered at a later date under the conditions in this subparagraph.

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[1] Although the legislative history of section 610 is unenlightening on this point, the Senate Statement of Managers description of a ban on the venting of refrigerants, which is stated as an outright ban similarly to the phrasing of the class II ban, specifically states that the refrigerant ban is self-executing and will take effect on the stated date even if that date is in advance of EPA regulations implementing the ban. See Cong. Rec. S16948 (daily ed. Oct. 27, 1990) (Chaffee-Baucus Statement of Managers).

D. Relation to Section 608 (Emissions Reduction)

EPA believes that the authority granted under section 608 (National Emission Reduction Program) is relevant to today's proposed rulemaking. Section 608(a)(3) requires EPA to set standards for reducing emissions of controlled substances to their "lowest achievable level," including "requirements to use alternative substances." EPA believes that where products using class I substances have adequate quantities of substitutes readily available, EPA has the authority under section 608 to require reducing emissions of controlled substances to the lowest achievable level of zero. This would amount to an effective ban on the use of controlled substances in those products quite apart from the section 610 ban on nonessential products. EPA believes that the authority under section 608 therefore overlaps with the requirements of section 610 for those use sectors where substitutes are commercially available, and is referencing it here in support of today's proposal to implement section 610.

III. Proposed Rule

EPA today proposes to implement the prohibition required by section 610 on the sale or distribution in interstate commerce of specified class I products and other nonessential products. EPA believes that the term "interstate commerce" in section 610 refers to the product's entire distribution chain up to and including the point of sale to the ultimate consumer. As such, all sale and distribution, including retail sale, would be prohibited as of the effective date of November 15, 1992.

EPA believes that there is sufficient time before the final regulation goes into effect on November 15, 1992 for retailers to liquidate any remaining stocks of prohibited products. EPA requests comment on any barriers that might prevent retailers from liquidating such stocks before the effective date.

A. Specified Class I Products

The prohibition on the sale and distribution of the products specified in section 610(b) (1) and (2) is required at a minimum. EPA believes that the excise tax on CFCs combined with the scarcity created by the limits on production and imports has sufficiently raised the price of CFCs so that it may already be more economical to use substitutes in the products specified by section 610(b) (1) and (2). Furthermore, as the phase-out and tax progress toward the year 2000 the cost of using CFCs will continue to rise, creating an increasing incentive to shift to alternatives. EPA proposes the following definitions of the specified products, both in terms of technical descriptions and commercial examples.

1. CFC-Propelled Plastic Party Streamers

EPA found only one type of product that fits the description "propelled plastic party streamers" in section 601(b)(1). String confetti is a household novelty product comprised of a plastic resin, a solvent, and a propellant mixed together in a pressurized can. When the dispensing nozzle is depressed, blowing action converts the resin into plastic foam streamers and propels them a few feet. Once popular at children's parties, string confetti was commonly known by its commercial name "silly string."

String confetti was originally manufactured using CFC–12 as the blowing agent. However, EPA is unaware of any company that currently uses CFCs in this type of product. The use of CFC–12 in string confetti was not prohibited by EPA's 1978 aerosol ban because technically the CFC also served as an active ingredient in the product and not exclusively as an aerosol propellant. Manufacturers switched initially to hydrocarbon systems but, due to flammability concerns, have since moved to HCFC–22 systems. HCFC–22 is a class II substance with an ozone depletion potential of 0.05 (one twentieth of CFC–12). (See listing notice of ozone depleting substances 56 FR 2420; January 22, 1991.)

Vermont and Minnesota have already passed laws banning the sale of CFC-propelled plastic party streamers. EPA believes that since the tax and the limits on supply will continue to raise the cost of CFCs, it is unlikely that they would again be used to propel string confetti. Nonetheless, as required by the statute, EPA today proposes to prohibit the sale or distribution of any CFC-propelled plastic party streamers.

2. CFC-Propelled Noise Horns

A noise horn is generally regarded as a product from which the high dispensing pressure of a propellant produces a loud piercing sound that can travel long distances. EPA is aware of several products that could fit the description of "noise horns" in section 610(b)(1), including marine safety noise horns, sporting event noise horns, personal safety noise horns, wall-mounted industrial noise horns used as alarms in factories and other work areas, and intruder noise horns as alarms in homes and cars.

Boaters have commonly used noise horns propelled by CFC–12 to meet U.S. Coast Guard Navigation Rules mandating that a signalling device be aboard vessels of all sizes in international and inland waters. One of the largest manufacturers of such "marine safety" noise horns reported that all of its horn products except for the smallest canister (2.1 ounces) had either been reformulated to use HCFC–22 or dropped from the product line. According to this manufacturer, the reason that CFC–12 is still used in its smallest canister is that the Department of Transportation (DOT) has not yet approved a canister of that size to accommodate the different pressure of HCFC–22.

EPA's report Alternative Formulations to Reduce CFC Use in U.S. Exempted and Excluded Aerosol Products (1989) states that as of September 1989, "several manufacturers" of noise horns had switched from CFC–12 to HCFC–22. Noise horns propelled with HCFC–22 meet or exceed all Coast Guard requirements and are available in canisters as small as 4.5 ounces. EPA believes that 4.5 ounce canisters are sufficiently small to satisfy consumer needs for all recreational, boating, automotive and home uses, and should not cost significantly more than the currently available 2.1 ounce size that uses CFC–12. Other alternative propellants for noise horns include HCFC–142b (in a mixture with HCFC–22), hydrocarbons, and hydrofluorocarbon (HFC) –134a. Hydrocarbons have not been commonly used due to flammability concerns. HFC–134a appears promising as a non-chlorinated substitute that unlike HCFC–22 poses no threat to the ozone layer. HFC–134a has recently become available in limited commercial quantities.

Other products propelled with CFCs that appear to fit the description of "noise horns" in section 610(b)(1) include sporting event noise horns, personal safety noise horns, wall-mounted industrial noise horns used as alarms in factories and other work areas, and intruder noise horns used as alarms in homes and cars. The availability of substitutes for these other noise horn products is similar to that of the marine safety noise horns. In fact, the same noise horn product may perform several of the uses listed above.

The use of CFC-12 in noise horns was not prohibited by the 1978 aerosol ban because the CFC served as the sole ingredient in the product and not exclusively as a propellant. However, Vermont and Minnesota have since passed laws banning the sale of CFC-propelled noise horns. As with the party streamers, EPA believes that the tax and the limits on supply have sufficiently

raised the price of CFCs so that it may already be more economical to use substitutes in noise horns.

EPA today proposes to ban all noise horns propelled with CFCs. EPA recognizes that some uses of noise horns are intended for safety. However, EPA believes that the current and potential availability of effective substitutes (including either the use of a different propellant or a slightly larger canister pending DOT approval of the smallest) underscores the statutory intent to prohibit the sale and distribution of *any* CFC-propelled noise horns.

3. CFC-containing Cleaning Fluids for Noncommercial Electronic and Photographic Equipment

Cleaning fluids are generally used to remove oxides, contaminants, dust, dirt, oil, airborne chemicals, fingerprints, and fluxes (the waste produced during soldering) from electronic and photographic equipment. These fluids can be comprised of CFCs, HCFCs, methyl chloroform or alcohols either alone or in mixtures.

EPA has identified several products that could be considered CFC-containing cleaning fluids for the uses described in section 610(b)(2). These products fall into four broad categories: solvent wipes containing CFC-113 (pre-moistened cloths), liquid packaging containing CFC-113 (applied with a cloth or other applicator), solvent sprays containing CFC-113 and/or CFC-11 (sprayed from a pressurized container through a nozzle or tube), and gas sprays containing CFC-12 (pressurized fluid released as a gas to physically blow particles from a surface). The specific intended noncommercial uses of these cleaning fluid products include tape and computer disk head cleaners, circuit and contact cleaners, film and negative cleaners, flux removers, and camera lens and computer keyboard dusters.

In identifying products that could be affected by the requirements under section 610(b)(2), EPA recognizes the specification made by Congress that only noncommercial uses of these cleaning fluids are affected by this particular prohibition. This distinction roughly mirrors the exemption to the 1978 aerosol ban granted by EPA for "nonconsumer articles used as cleaner-solvents, lubricants or coatings for electrical or electronic equipment" (See final rule March 17, 1978; 53 FR 11324.) However, as noted above, the 1978 ban applied only to aerosol propellant uses of CFCs. Other noncommercial CFC-containing cleaning fluids affected by section 610(b)(2), including non-aerosol pressurized dispensers, were not prohibited in 1978 because the CFCs were not technically acting as aerosol propellants.

Vermont and Oregon have passed laws banning the sale of non-commercial cleaning fluids containing CFCs. EPA believes that the tax and the limits on supply are providing a continual incentive for users of CFCs in noncommercial cleaning fluids to switch to alternatives.

EPA today proposes several options to implement the specific requirements of section 610(b)(2) to prohibit the sale or distribution of CFC-containing cleaning fluids for noncommercial use without disrupting the sale or distribution of these same cleaning fluids for commercial use. Since commercial and noncommercial photographic and electronic equipment are frequently the same products used in different contexts (e.g., the same computer could be used in either a commercial or a noncommercial setting) noncommercial use of cleaning fluids could be difficult to distinguish from commercial use at the point of sale. EPA's options are intended to address this potential difficulty. These options are discussed below individually, but are not necessarily mutually exclusive to the extent that two or more options could be coordinated.

The first option is to require that all CFC-containing cleaning fluids be sold in bulk (i.e., either in large cans or in cases of small cans). The rationale behind this option is that most commercial users of these cleaning fluids would likely require greater amounts than a noncommercial user, and that most noncommercial users would not likely buy bulk quantities due to the higher cost. A problem with this approach, however, is that some commercial users may only need small amounts of these cleaning fluids. EPA would not want to encourage waste of available CFCs or add unnecessarily to their cost where there may be a legitimate commercial need. Additionally, while the increased cost of bulk sales would be an incentive for noncommercial users not to buy the CFC-containing cleaning fluids, they would not in any way be prevented from doing so.

A second option is to prohibit the sale of CFC-containing cleaning fluids by outlets that are predominantly oriented toward noncommercial users. In this way, typical sources of these cleaning fluids for noncommercial users would no longer have them available. One national retail chain of noncommercial electronic equipment has already pledged to stop carrying CFC-containing cleaning fluids.

The chief problem with this option is developing a definition for "predominantly oriented to noncommercial users." While some retail stores would clearly fit this description, there would inevitably be situations where it is difficult to make a determination (e.g., a distributor that sells wholesale to commercial users but also has a window for retail sales). In addition, some commercial users might be purchasing their supplies from outlets that are generally thought to be for noncommercial users. Finally, as in the first option, there would be no mechanism to actually prevent a noncommercial user from buying the cleaning fluids.

A third option is to require either check-out signs in stores or warnings on the labels of all CFC-containing cleaning fluids indicating that they are intended for commercial use only. EPA believes that labeling will be an important aspect of its Stratospheric Ozone Protection Program and is currently developing a proposal to implement the labeling requirements in section 611 of the Clean Air Act, as amended. However, additional labeling could be costly and anecdotal evidence suggests that when consumers see a product labeled "for commercial use only" they may actually be more likely to purchase the product because they think that it is more effective that a standard consumer product. Once again, even with a label, a noncommercial user would still be able to buy the cleaning fluid.

A fourth option is to require recordkeeping by the distributors of CFC-containing cleaning fluids at the point of sale, documenting the fact that they were sold only to commercial users. EPA believes that this is the best approach to effectuate the required ban on the noncommercial use of these cleaning fluids. A paper trail of this sort already exists in many cases for tax purposes or as part of standard business practices. EPA's additional recordkeeping requirement could be small enough as not to present an unreasonable burden and broad enough to be fulfilled by the tax or business records where they are already kept.

For example, the information needed by EPA to verify that the sale of the cleaning fluid was to a commercial user would be the following: (1) Name of the person or business; (2) business address; (3) commercial identification number; (4) date of transaction; and (5) quantity of product purchased. The commercial identification number requirement could be fulfilled by one of several options, including a federal employer identification number (EIN), a state

sales tax exemption number or local business license number. Under this option, consumers without a commercial identification number would be unable to purchase CFC-containing cleaning fluids.

Nearly all states have sales tax and require recordkeeping for commercial-use and resale exemptions. The additional burden on distributors already keeping these records for tax purposes would be very small. The recordkeeping burden for those distributors operating in states without sales tax would be slightly greater, but EPA believes that it would still be minimal.

The distributor would be required to retain this information for each customer buying CFC-containing cleaning fluids. For the purposes of today's proposed rulemaking, EPA proposes to define the term "distributor" as the seller of a product to its ultimate consumer. This ultimate consumer could generally be considered either a commercial or noncommercial user of the product. Under today's proposed regulation, however, distributors would only be permitted to sell CFC-containing cleaning fluids to commercial users with one of the identification numbers specified above. Included in this definition would be both domestic distribution and distribution for export from the United States.

The information could be kept by the distributor as part of tax exemption paperwork, computer files or other existing business records. The recordkeeping required on a transaction-by-transaction basis would then be tallied and balanced against total purchases of CFC-containing cleaning fluids by the distributor as a compliance check.

Alternatively, the recordkeeping requirement could be limited to just the following: (1) Name of the person or business; (2) business address; (3) commercial identification number; and (4) date of first transaction. Under this approach, new records would not have to be completed at every transaction but commercial use information would have to be renewed every year in order to be considered valid. In other words, one record for each commercial buyer of CFC-containing cleaning fluids would fulfill EPA's proposed requirement for one full year after the information is recorded. Thus the recordkeeping burden on industry would be negligible. After one year, the record for each commercial buyer would have to be renewed in order to insure that the information is still accurate. Under either approach to this fourth option, the distributor would be required to keep the records on file for three years.

While requiring transaction-specific recordkeeping places a greater burden on industry than annual recordkeeping, eliminating transaction specific information could hinder the necessary compliance monitoring of the ban on noncommercial sales. EPA specifically requests comment on the appropriateness of including transaction-specific information in the recordkeeping requirement.

The total volume of CFCs used in the U.S. in 1988 for both commercial and noncommercial cleaning fluids for electronic and photographic equipment was approximately 3000 metric tons, or less than 0.8 percent of the total use of class I substances (weighted for ozone-depletion potential). EPA estimates that noncommercial sales represented a small but not insignificant fraction of this total 1988 use estimate and that total sales have dropped since 1988 due to the tax and the scarcity of CFCs caused by the phase-out regulations. As a result, the current sales of commercial cleaning fluids for electronic and photographic equipment are likely to be substantially lower than the 1988 level.

As with the party streamers and noise horns, EPA believes that the excise tax on CFCs combined with the scarcity created by the limits on production and imports have already raised the price of CFCs sufficiently so that it may no longer be economical to use them as cleaning fluids for noncommercial equipment. EPA is therefore proposing to implement the required ban through option four described above. However, EPA is especially interested in comments regarding the above options, including EPA's proposed recordkeeping requirement, or additional options for distinguishing between commercial and noncommercial use of CFC-containing cleaning fluids.

B. Other Class I Products

Section 610(b) requires EPA to identify and prohibit the sale or distribution of nonessential products releasing class I substances. The statute requires that, at a minimum, the prohibition apply to the above specified products and "other consumer products" releasing class I substances determined by EPA to be nonessential. Criteria for EPA to consider in determining whether a product is nonessential are listed in section 610(b)(3). Below, EPA first reviews the 1978 ban on aerosols using CFCs as propellants and then proposes an explanation of the criteria listed in section 610(b)(3), a definition of the term "product," and specific products EPA believes may fit the criteria.

1. Criteria Under the 1978 Aerosol Ban

EPA previously addressed the issue of nonessential products releasing ozone-depleting substances during the development of its 1978 ban on aerosol propellant uses of CFCs under the Toxic Substances Control Act (TSCA). Since the criteria developed to determine which products were essential and nonessential for that rule have already undergone public debate and discussion, EPA believes that it could be useful to review and make reference to them here.

The criteria used by EPA to determine which products should be exempted from the 1978 ban as "essential uses" were as follows: (1) Nonavailability of alternative products; (2) economic significance of the product, including the economic effects of removing the product from the market; (3) environmental and health significance of the product; and (4) effects on the "quality of life" resulting from no longer having the product available or using an alternative product. (See reference Essential Use Determinations—Revised, 1978.)

The background document supporting the 1978 ban states that when granting "essential use" exceptions, EPA believed that no single factor was sufficient to determine that a product or particular use was essential. The nonavailability of substitutes alone, for example, was not sufficient for EPA to exempt a product. The product also had to provide an important societal benefit to obtain an "essential use" exemption. If an alternative did exist, however, EPA decided that it was not necessary to make any judgements concerning the other criteria.

In other words, if EPA determined that an aerosol product had an available alternative, EPA did not need to make a determination on whether its purpose was or was not important in order to deny any petition for exemption for that product under the 1978 rule.

2. Criteria Under Section 610(b)(3)

Section 610(b)(3) instructs EPA to consider the following criteria in determining whether a product is nonessential: "The purpose or intended use of the product, the technological availability of substitutes for such product and such class I substance, safety, health, and other relevant factors." The statute requires EPA to consider each criterion but does not outline either a ranking or a calculus for comparing their relative importance. Nor does the statute require that any

minimum standard within each criteria be met.

EPA believes that all criteria specified in the Act should be considered together in determining if a product is nonessential. Further discussion of the definition of the term "product" and strategies for identifying nonessential products can be found in part III.B.3 below.

The criteria specified by section 610(b)(3) for the Agency to consider in determining whether a product is nonessential may interrelate and overlap to some degree. These criteria are discussed in turn below.

a. *The purpose or intended use of the product.* EPA proposes that this criterion address whether the product is sufficiently important so that the danger from the continued use of a class I ozone-depleting substance is outweighed, or sufficiently unimportant so that even a lack of available substitutes might not prevent the product from being considered nonessential. For example, Congress seems to consider that the purpose or intended use of medical products is important enough to preclude EPA from banning as nonessential any medical product without an "effective alternative" (see definition in part II.D.) but that party streamers are not important enough to warrant the continued use of CFCs regardless of the availability of substitutes.

However, the other examples of nonessential products cited by Congress for EPA to ban at a minimum do not provide as clear cut an illustration of this criterion. Noise horns, for example, are primarily used for safety reasons. Nor is the use of cleaning fluids on noncommercial photographic and electronic equipment generally considered to be "frivolous." EPA believes that these examples of nonessential products provided by Congress show that while it is critical to consider the purpose or intended use of a product along with the other specified criteria, Congress did not intend to limit EPA's authority solely on the basis of intended use.

A possible corresponding criterion from the 1978 aerosol ban is the effect on the "quality of life" resulting from no longer having the product available or using an alternative. As discussed above, the product had to provide an important societal benefit for EPA to grant an exemption from the 1978 ban even if the product did not have an available alternative. For the ban under section 610(b)(3), EPA could similarly consider impacts on the quality of life by a product using a class I substance, by the product's switch to a substitute chemical or process, or its removal from the market entirely.

EPA believes that the extent to which manufacturers of a product have already switched out of class I substances is a relevant indicator for this criterion. If, for example, the great majority of manufacturers have already shifted to substitutes, the use of a class I substance in that product could be considered by EPA as nonessential.

The distinction between a "nonessential product" and a "nonessential use of class I substances in a product" is also relevant to this criterion. While foam cushioning products for beds and furniture are not "frivolous", for example, the use of a class I substance in the manufacturing process of foam cushioning where substitutes are readily available could be considered nonessential.

b. *The technological availability of substitutes for such products and for such class I substances.* EPA proposes that this criterion addresses the existence and accessibility of alternative products or alternative chemicals for use in products releasing class I substances. EPA believes that the phrase "technological availability" includes both currently available substitutes (i.e., presently produced and sold in commercial quantities) and, in certain cases, potentially available substitutes (i.e., determined to be technologically feasible, environmentally acceptable and economically viable, but not yet produced and sold in commercial quantities). EPA recognizes, however, that the current availability of substitutes would be more compelling than potential availability of substitutes in determining whether a product is nonessential.

The corresponding criterion from the 1978 ban is the "nonavailability of alternative products." In its supporting documentation, EPA stated that this was the primary criterion for determining if a product had an "essential use" under the 1978 rule. EPA emphasized, however, that the absence of an available alternative did not alone disqualify a product from being banned.

With regard to the criteria for prohibiting nonessential products as required by the Clean Air Act, EPA today proposes to consider together each criterion specified in section 610(b)(3) for every product it proposes as nonessential. The availability of substitutes is clearly a critical criterion for determining if a product is nonessential. In certain cases, a substitute that is technologically feasible, environmentally acceptable and economically viable, but not yet produced and sold in commercial quantities, may meet this criterion. EPA believes that, where substitutes are available, the use of controlled substances could be considered nonessential even in a product that is extremely important.

It should not be construed that EPA necessarily advocates all substitutes that are currently being used in place of CFCs in the products EPA identifies as nonessential. Some manufacturers have switched from CFCs to substitutes which may have serious health and safety concerns. EPA will be looking carefully at the relative risks and merits of different substitutes for ozone-depleting substances when it develops regulations to implement section 612 (Safe Alternatives).

c. *Safety and health.* These two criteria could be interpreted as relating to the effects of the products releasing class I substances or their substitutes on humans and the environment. Included in this interpretation could be direct and indirect effects of product use, and the direct and indirect effects of alternatives, such as ozone-depletion potential, flammability, toxicity, corrosivity, global warming potential, energy efficiency, ground level air hazards, et cetera.

EPA does not propose to attempt to develop a formula or ranking factors for comparing these diverse safety and health issues. Such an exercise would be beyond the scope of this rulemaking. EPA proposes instead to consider the above issues relating to safety and health in a qualitative manner without attempting to draw conclusions about their relative importance.

This criterion would highlight, for the purpose of this rulemaking given its tight time frame, any specific safety and health issues relating to the product's use of class I substances and its alternatives of which EPA is currently aware. If any safety or health issues prevented a substitute from being used in a given product, EPA proposes that it would then consider that substitute to be "unavailable" at this time for that specific product or use. As EPA develops expertise in assessing the trade-offs of any potential environmental hazards posed by substitutes for ozone-depleting substances, it may revisit this issue for the purpose of banning other products or, as stated above, take action under section 612.

d. *Other relevant factors.* The one remaining criterion from the 1978 ban not yet addressed in today's proposal is the "economic significance of the product." Section 610(b)(3) does not

specify that EPA must consider the economic impact of banning a product, but the Agency believes that it is not precluded from doing so as an "other relevant factor."

In considering the immediate economic impact of banning the use of a class I substance in a product, EPA proposes to compare the cost of the possible substitutes and the cost of the class I substance, including the effects of the excise tax and the scarcity in the supply of class I substances created by the limits on production and importation under the Clean Air Act and the Montreal Protocol. EPA believes that in many cases the tax and supply limits have already provided a compelling incentive for manufacturers using class I substances to switch to substitutes. EPA also proposes to consider manufacturing costs associated with using substitutes or switching to alternative market lines. Finally, EPA proposes to consider the societal costs of eliminating the product altogether where relevant.

Another relevant factor apart from economic impact that EPA proposes to consider is the effect of state of local laws prohibiting the use of certain substances commonly used as substitutes for ozone-depleting chemicals. For example, Massachusetts, New Jersey, and California all specifically limit the use of methylene chloride which is used as a CFC-substitute for some flexible foam products. Other areas have limits on the general emissions of volatile organic compounds (VOCs). If the only available substitute for the use of a class I substance in a product—including both alternative chemicals and product substitutes—were a chemical whose use was prohibited in certain areas, EPA would consider that substitutes were unavailable for that product in those areas. As stated above, however, the lack of available substitutes does not automatically disqualify a product from being prohibited as nonessential.

3. Definition of the Term "Product"

Section 610(b) requires EPA to "identify nonessential *products* that release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal) and prohibit any person from selling or distributing any such *product*, or offering any such *product* for sale or distribution, in interstate commerce." (Emphasis added.) Section 610(b)(3) goes on to state that at a minimum the prohibition shall apply to "other [class I] consumer products" determined to be nonessential considering "the purpose or intended use of the product, the technological availability of substitutes for such product and such class I substance, safety, health, and other relevant factors." An understanding of the term "product" is especially important for making the required determinations based on the criteria in section 610(b)(3) and for developing a strategy for identifying which products may be nonessential.

The issue with regard to the definition of the term product is whether only individual items are affected by section 610 or if nonessential uses of class I substances are also affected. Despite the title of this section ("Nonessential products containing chlorofluorocarbons"), the statutory language suggests that any use that might "release class I substances into the environment (including any release occurring during manufacture, use, storage or disposal)" would be relevant to this requirement.

The term "product" could be narrowly defined as only individual items or even brand names as distinct from other brands with potentially different intended uses or available substitutes. For example, a 12-ounce can of CFC–12 could be used either as a noise horn or to recharge a car air-conditioner. Following the requirements of title VI, a noise horn would be a prohibited nonessential product but the commercial use of the same can for car air-conditioning would be permitted. Alternatively, one foam product manufacturer may have pledged to phase-out the use of CFCs from its manufacturing process while another manufacturer of a comparably used foam may not. As such, the scope of the term product could arguably be narrowed to such an extent that significant resources would be required simply to begin to analyze the nonessentiality of all individual types and brands of products releasing class I substances.

However, EPA believes that a broader definition of the term "product" is equally consistent with the statutory language and much more congruous with the purposes of the statute as a whole. First, the word "product" itself has a very broad definition in common dictionary usage. Second, the statutory mandate to consider the technological availability of substitutes "for such product and for such class I substance" clearly indicates congressional intent to focus on uses of class I substances in categories of products as well as individual products. Finally, the overall purposes of title VI to decrease use of ozone-depleting substances generally favors a broad interpretation of the ambiguous term "product."

Despite the potential differences between individual items, a broader definition of the term "product" also seems to make more practical sense. EPA simply does not have adequate resources given the short statutory rulemaking schedule to pursue the strategy of examining each of the hundreds of thousands of individual types and brands of products releasing class I substances. Nor would it make sense to do so even if EPA had infinite resources. Substitutes have already been identified for and are currently being used in entire categories of products which once used class I substances. Therefore, EPA today proposes that both the continued use of class I substances in product categories where alternatives are available and "frivolous" individual products can be considered nonessential. Thus, EPA proposes to ban nonessential uses of controlled substances under this section, allowing for essential use exemption for specific cases within the product categories where alternatives are in fact not available.

The two possible definitions of the term "product" discussed above are rooted in two of the criteria required by section 610(b)(3) for determining what is nonessential and lead to two distinct strategies for identifying products. The first criterion ("purpose or intended use of the product") suggests that narrowly defined individual items should be analyzed and if determined to be frivolous then they would be banned. The second criterion ("technological availability of substitutes") suggests that if substitutes are available for a product—or for the use of a class I substance in a category of products—then the nonessential use ought to be banned, even if the product category itself is not "frivolous" in its intended use.

EPA believes, as stated above, that all criteria specified in the Act should be weighed in determining if a product is nonessential, and today proposes that section 610 gives authority to ban both individual "frivolous" products and nonessential uses of class I substances in products that may or may not be "frivolous."

This interpretation of the definition of the term "product" in section 610(b)(3) to include "use" is consistent with the requirement specified in other parts of the same section. EPA believes that the required ban of CFC-containing cleaning fluids for noncommercial electronic and photographic equipment specified by section 610(b)(2) (see III.A.3. above)

demonstrates the intent of Congress to include specific *uses* in its definition of a nonessential product.

Furthermore, section 610(d) bans "(A) any aerosol product or other pressurized dispenser which contains a class II substance; or (B) any plastic foam product which contains, or is manufactured with, a class II substance," allowing for exemptions in specific cases. All aerosol and foam products are not identified as being nonessential, rather the use of class II substances in these two categories of use, aerosols and foams, is banned.

EPA's 1978 ban of products using CFCs as aerosol propellants under TSCA (see above and March 17, 1978; 43 FR 11318) also followed this same mechanism. This rule prohibited the manufacture, processing and distribution in commerce of all fully halogenated CFCs for "aerosol propellant uses," except for those EPA determined to be essential.

Finally, apart from the ban on nonessential products, section 608(a)(3) gives EPA additional authority to set standards for reducing emissions of controlled substances to their "lowest achievable level," including "requirements to use alternative substances." An alternative to banning the nonessential use of a controlled substance under section 610 would be to require the reduction of emissions for that use under section 608 to zero by mandating the use of substitutes where they are available.

EPA therefore concludes that under the authority of both sections 610 and 608, it is appropriate to ban nonessential uses of class I substances as well as nonessential products releasing class I substances. Both of these strategies are included within the meaning of the term "nonessential products" for the purposes of this rulemaking.

4. Proposed "Other" Products

The Agency today proposes to prohibit the sale and distribution of two broadly defined products where the emissions of certain class I substances can be reduced to zero based upon the availability of alternatives. These proposed product categories are: flexible and packaging foam using CFCs; and aerosols and other pressurized dispensers containing CFCs. In addition, EPA raises for public comment whether it should also prohibit the sale of residential fire extinguishers containing halons. Below, EPA defines each of these products and then presents an overview of how each product meets the criteria specified by section 610(b)(3) and discussed above in part III.B.2. More detailed analyses of the proposed "other" products to be prohibited are provided in the background documents accompanying this rulemaking. (See Docket A–91–39.)

In determining the initial list of which "other" products to prohibit under section 610, the Agency reviewed every major use sector (although not each individual product or brand) of each class I substance (CFCs, halons, carbon tetrachloride and methyl chloroform), including refrigeration and air conditioning, solvent use, fire extinguishing, foam blowing, and aerosol uses.

Refrigeration and air-conditioning, including mobile air-conditioning, represent the largest total use of class I substances in the United States (31.8 percent weighted by ozone-depletion potential (ODP) in 1987). Substitutes are currently being developed for all refrigeration and air-conditioning products. EPA believes that substitutes for some uses, like HFC–134a in mobile-air conditioners, are very close to being available. However, a range of potential substitutes for other refrigeration and air-conditioning uses are still in the process of being evaluated. EPA did not include prohibitions on the use of class I substances in refrigeration or air conditioning in this rulemaking because these uses are generally considered to be very important and conclusions on the appropriate substitutes are not anticipated to be available within the time-frame of this rulemaking. EPA plans to specifically address refrigeration and air-conditioning uses of class I substances under its upcoming regulations to fully implement the requirements of section 608 (Emissions Reduction).

Solvent uses of class I substances, including commercial electronics de-fluxing, precision cleaning, metal cleaning and dry cleaning, also represent a significant use level in the U.S. (21.7 percent weighted by ODP in 1987). Industry has identified potentially available substitutes for nearly all of the hundreds of thousands of products currently manufactured with class I solvents. For some specific products, including printed circuit boards, many companies have already pledged to phase-out CFC use well before 2000. These scheduled phase-out dates range from as early as the end of 1991.

EPA believes that each of the identified substitutes, including such alternative solvents as alcohols and HCFCs, and alternate processes as aqueous and semi-aqueous cleaning, "no clean" assemblies, controlled atmosphere soldering and hydrocarbon/surfactant cleaning, has advantages and disadvantages to consider. EPA also recognizes that the use of these substitute technologies may require capital or manufacturing process changes in order to ensure protection of human health and the environment. EPA is not addressing solvent use in today's proposed regulations because the sheer number of products and range of potential substitutes (each with specific technical and health and safety issues) makes it impossible for EPA to conclude that substitutes are currently available for those uses within the short statutory time-frame of this rulemaking. EPA will address solvent uses of class I substances under sections 608 and 612.

EPA examined the use of class I substances in foam products and is including flexible and packaging foam releasing CFCs in today's proposed rulemaking. EPA is not including insulating foams releasing CFCs. Unlike the other foam types which have currently available substitutes, the 1989 United Nations Environment Programme (UNEP) technology assessment estimated that only 10 to 50 percent of CFC use in insulating foams could be reduced by 1993. (See reference Technical Options Report.) Rigid insulating foams using CFCs were specifically exempted from the excise tax in 1990, and subject only to a reduced tax until 1994. The required ban on the use of class II substances in foam products in section 610(d) also specifically exempts insulating foams. As a result, EPA has focused on the flexible and packaging foams for today's proposed rulemaking and will address insulating foams under upcoming rules implementing sections 608 and 612.

The class I substances released by products identified by EPA in today's notice include both CFCs and halons. EPA did not identify any products releasing the other class I substances, carbon tetrachloride and methyl chloroform, in today's notice. EPA estimates that in the U.S. most carbon tetrachloride is consumed in the production process of CFCs. The production of CFCs and other class I ozone-depleting substances is already restricted by EPA's regulations implementing the requirements of section 604. EPA believes that is has adequate controls under its current regulations to limit the production of CFCs and does not today propose to further restrict the use of carbon tetrachloride in this process.

Methyl chloroform, on the other hand, is widely used as a solvent for metal cleaning, in adhesives and coatings, and in aerosols. Like CFC–113, methyl chloroform is used in hundreds of thousands of different products. EPA

believes that substitutes may be available for many of the current uses of methyl chloroform. Because methyl chloroform was not included in the original 1987 Montreal Protocol only limited information on specific uses and substitutes has been developed to date by industry and the Agency. EPA intends to collect more information on the uses of methyl chloroform, especially in aerosols and foams, in the near future. EPA may identify products releasing methyl chloroform as nonessential as part of its rules promulgated in time to meet the required 1994 ban on class II substances in aerosols and foams. EPA may also address the uses of methyl chloroform under sections 608 or 612.

EPA selected the products identified in today's notice for the following reasons: First, EPA believes that they all clearly fit the criteria specified by section 610(b)(3) based upon information and analysis the Agency already had or could obtain within the tight regulatory time-frame required by the statute. In fact, all the identified products are relatively well defined and have been the subject of prior federal or state level rulemakings or voluntary agreements to limit the use of ozone-depleting substances.

EPA also took into consideration the prohibition required by section 610(d) on certain products releasing class II substances which goes into effect in 1994. EPA is concerned about the potential environmentally adverse incentive of banning the use of class II substances in certain products in 1994 while permitting the use of the more harmful class I substances in the same products. Thus, the statutory prohibition in section 610(d) provided further direction in choosing products on which to focus at this time under section 610.

Today's proposal may not be the only determination that EPA will make regarding products releasing class I or class II substances. Due to the tight statutory time-frame, EPA did not have adequate opportunity to focus on more complex use sectors such as solvent use or on chemicals without a long history of regulation such as methyl chloroform. Should EPA propose further action, a quantitative assessment of costs and benefits as required by Executive Order 12291 would be performed.

EPA intends to revisit the issue of nonessential products in time to meet the required deadline for the ban in 1994 of class II products specified by section 610(d). To this end, as stated above, EPA plans in the near future to collect more information specifically on the uses of methyl chloroform and class II substances in foams and aerosols.

EPA believes that section 610 requires the Agency to include in the regulations, due by November 15, 1991, only those products or the use of class I substances in such products which it can conclude are nonessential. Where EPA can not at this time make such a determination, it is not required to include those products in the regulations. However, EPA believes it has continuing authority under sections 610 and 301 of the Clean Air Act to ban at any time in the future products that it concludes are nonessential.

In addition, EPA will further examine the uses of class I and class II substances in its upcoming rulemakings to implement the requirements of lowest achievable emissions and the use of safe alternatives in sections 608 and 612. Because Title VI provides several tools to regulate the use of ozone-depleting substances and their substitutes, the Agency intends to utilize whichever authority is most appropriate for limiting emissions in each use sector.

a. *Flexible and packaging foam using CFCs.* The foam plastics manufacturing industries, the markets their products serve, and their uses of CFCs are extremely varied. CFCs-11, -12, -113 and -114 have all been used to some extent in the manufacture of foam plastic products, which include building and appliance insulation, cushioning foams, packaging materials, floatation devices and shoe soles. According to UNEP's 1989 Flexible and Rigid Foams Technical Options Report, the foam industry used approximately 267,000 metric tons of CFCs worldwide in 1986, representing 25 to 30 percent of annual global CFC use. EPA believes that the level of CFC use in the U.S. for many foam types has decreased dramatically since 1986. For some foam products, the use of CFCs has already been completely phased out.

CFCs had been commonly used as blowing agents in the manufacturing process of many foam products because they have suitable boiling points and vapor pressures, low toxicity, very low thermal conductivity, they are non-flammable, non-reactive, and they had been cost effective. The excise tax levied by Congress in 1989 significantly raised the price of CFCs (except for use in the manufacture of rigid insulating foam, which was exempt from the tax in 1990 and is subject to a greatly reduced tax of approximately $0.25 per pound until 1994) and as a result foam manufacturers have switched to non-CFC substitutes in many areas.

Even before the tax went into effect several groups of foam manufacturers, including the Foodservice and Packaging Industry and the Polyurethane Foam Association, made significant voluntary strides in cooperation with the Agency and several environmental groups to eliminate or reduce the use of CFCs in their products ahead of the required phase-out timetable. In addition, one group has worked with the Agency to develop and make available an in-depth description of technical options to achieve these reductions. (See references Handbook for Eliminating and Reducing Chlorofluorocarbons in Flexible Foams.) Among the many commonly used substitutes for CFCs in flexible and packaging foam are HCFCs, hydrocarbons and methylene chloride. (See below.)

The 1989 UNEP report provides technical options for the entire foam industry by foam type, since each type has a distinct set of product and process application needs. For example, an important distinction exists between foam plastics where the cells are closed, trapping the blowing agent inside, and those with open cells which release the blowing agent during the manufacturing process.

For the purposes of today's proposed rulemaking, EPA defines "flexible and packaging foam" as the following foam types: polyurethane flexible slabstock and molded foams, rigid polyurethane packaging foam, polyethylene foam, polypropylene foam, and extruded polystyrene sheet foams. The included polyurethane foams are open celled thermosetting foams, where the blowing agent is mixed with chemicals which react to form the plastic. The other identified foams are closed cell thermoplastic foams, where the blowing agent is injected into a molten plastic resin which hardens upon cooling.

Other types of foam that could be interpreted as "flexible and packaging foam" include expanded polystyrene foam and polyvinyl chloride foam. However, the 1989 UNEP report indicates that CFCs were never used in the production of these foam types. As a result, EPA believes that it is unnecessary to formally prohibit the use of CFCs in these products and is not today proposing to include them. However, in the unlikely event that CFCs are used in the manufacturing process of these products in the future, EPA reserves the right to take action under this section to prohibit the use of CFCs in these products as nonessential.

EPA raised the possibility of banning flexible and packaging foams first in its December 14, 1987 Proposed Rule (52 FR 47489) and again in its August 12, 1988 Advanced Notice of Proposed Rulemaking (53 FR 30604). Since that time, several states including Oregon, Connecticut and Missouri have passed

laws banning certain types of flexible and packaging foams using CFCs. Of the foam types defining "flexible and packaging" foams, EPA believes that polyurethane flexible molded foam, rigid polyurethane packaging foam, polyethylene foam, polypropylene foam and extruded polystyrene sheet have already phased out of CFC use completely. EPA also believes that emissions of CFCs from the manufacture of the one remaining flexible foam type can be reduced to zero because manufacturers have largely switched out of CFCs to readily available substitutes and are currently exploring alternative technologies.

EPA is proposing to prohibit the sale and distribution of flexible and packaging foams using CFCs primarily because CFC use has already largely stopped in the proposed foam types following voluntary efforts and as a result of the tax. In addition, if CFCs were not prohibited in flexible and packaging foams, the self-effectuating ban in 1994 of foam products made with or containing class II substances could set up an environmentally harmful incentive for foam manufacturers who have not switched out of CFCs to continue to use them, or for those using HCFCs to switch back to CFCs.

(1) Purpose or intended use. Flexible and packaging foams have several "non-insulating" uses, including furniture and upholstery, transport and protective packaging, cushioning, protective wrap, padding, food containers, and floatation devices. EPA considers that the purposes of flexible and packaging foam as described above are not "frivolous." However, EPA believes that the fact that the great majority of manufacturers of these products have already switched out of CFCs to readily available substitutes indicates that the intended use of CFCs in this product area is nonessential.

(2) Technological availability of substitutes. Substitute options currently being used in flexible and packaging foams include increased foam density and/or water use combined with the following blowing agents: HCFC–22, hydrocarbons, blends of HCFC–22 and hydrocarbons, HCFC–142b, acetone, methyl chloroform and methylene chloride.

Other near-term alternatives available to eliminate CFCs in flexible foam include new polyol technology which increases softness with little or no CFC use and "AB" technology which uses formic acid to double the quantity of gas generated in the reaction of isocyanate with water.

Longer-term options for flexible and packaging foam that has not already switched out of CFCs could include HCFCs–141b, –123, and –124, and HFCs–125 and –134a.

(3) Safety and health. Methylene chloride is classified by EPA as a B2 (probable human) carcinogen with an Occupational Safety and Health Administration Permissible Exposure Limit (OSHA PEL) of 25 parts per million. Appropriate worker health and safety practices must be followed by flexible foam manufacturers in those states that allow the use of this chemical.

Hydrocarbons and acetone are flammable. Manufacturers must take special safety precautions including appropriate ventilation when using these substances. Hydrocarbons and acetone are also volatile organic compounds (VOCs) which can contribute to the formation of ground-level air pollution. States must consider VOC emissions in meeting requirements for State Implementation Plans (SIPs) to attain the ground-level ozone National Ambient Air Quality Standards.

HCFCs (particularly -141b) and methyl chloroform, although they have much less effect on stratospheric ozone than CFCs, do have measurable ozone-depletion potentials. (See listing notice 56 FR 2420; January 22, 1991.) These substances are limited elsewhere in title VI.

The formic acid used in AB technology creates carbon monoxide and has a Ph of 3, so it too requires special care in handling.

EPA believes that none of these health and safety issues described above are persuasive enough to preclude the prohibition of CFC-use in flexible and packaging foams under the requirements of sections 610 and 608. However, EPA does not necessarily advocate all substitutes currently being used by manufacturers in place of CFCs and EPA intends to carefully examine the issue of safe alternatives under section 612.

(4) Other relevant factors. The great majority of flexible and packaging foam manufacturers have already phased-out the use of CFCs. Voluntary agreements and the excise tax provide continuing incentives for those manufacturers still using CFCs to switch to substitutes. As a result, EPA anticipates that the future economic impact from this proposed prohibition will be minimal even for small businesses. (See Docket A–91–39.)

Some states limit the use of methylene chloride. Flexible foam manufacturers still using CFCs in these areas would be unable to use this particular substitute. EPA recognizes, however, that several substitute options apart from methylene chloride (e.g., modified polyols and water blown foam) are currently in use or are near-term substitutes for these foam types. EPA requests comment on the impacts of state limits on the use of methylene chloride.

(5) Proposed action. Based upon consideration of the above criteria, EPA believes that CFC use in the manufacturing process of flexible and packaging foam is nonessential and today propose to ban the use of CFCs in this product.

b. *Aerosols and other pressurized dispensers containing CFCs.* CFCs have been used extensively in aerosol products worldwide, mainly as propellants but also as solvents and as the active ingredient in products. In the mid-1970s the use of CFCs-11 and -12 in aerosols accounted for 60 percent of the total use of these chemicals worldwide. Due to mandatory and voluntary reduction programs in several countries, including the 1978 ban in the U.S., this use has been subsequently reduced. In 1986 aerosol use was still substantial, accounting for 300,000 metric tons, representing 27 percent of the global use of CFCs. In the U.S., 9870 metric tons were used in aerosols exempted or excluded from the 1978 ban, representing 2.5 percent of all class I substances (weighted by ozone-depletion potential (ODP)) in 1988.

For the purposes of today's proposed rulemaking, EPA is defining "aerosols and other pressurized dispensers containing CFCs" to include both propellant and non-propellant uses of CFCs. Propellant uses of CFCs were banned by EPA in 1978 except for essential uses. Non-propellant uses of CFCs, such as solvent use, were excluded from the 1978 ban. EPA has re-examined all of the products excluded from the 1978 ban as well as those specifically exempted from the 1978 ban. As EPA stated in its August 12, 1988 Advanced Notice of Proposed Rulemaking (53 *FR* 30604), several alternative propellants and delivery systems have been developed since the original aerosol exemptions were granted. In addition, many previously exempted or excluded products no longer use CFCs. (See reference Alternative Formulations.)

EPA is today proposing to ban CFCs in aerosols and other pressurized dispensers primarily because a variety of substitutes for CFCs are now widely available and currently in use. In addition, if CFCs were not banned in aerosols and other pressurized dispensers, the self-effectuating ban of aerosols and pressurized dispensers containing class II substances in 1994 could set up an environmentally harmful

incentive for manufacturers who have not switched out of CFCs to continue to use them or for those using HCFCs to switch back to CFCs.

(1) Purpose or intended use. CFCs have been used in exempted aerosol products and other excluded pressurized dispenser products as propellants, solvents and active ingredients. Intended use falls into the following product categories: lubricants and cleaning fluids for electric and electronic equipment, lubricants and cleaning fluids for aircraft maintenance, tire inflators, diamond grit spray, commercial dusters and freeze sprays, pesticides, mercaptan stench warning devices, pressurized drain openers, and whipped topping stabilizers. EPA considers that the purposes of these aerosols and other pressurized dispensers are generally not "frivolous." However, EPA believes that the fact that the great majority of manufacturers of these products have switched out of CFCs (see reference Background Document in Docket A–91–39) indicates that the intended use of CFCs in this product area is nonessential.

EPA is not today proposing to ban the following aerosols or other pressurized dispenser products containing CFCs which were exempted from the 1978 ban and are intended for medical uses: contraceptive vaginal foams, lubricants for pharmaceutical pill and tablet manufacture, metered dose inhalation devices (MDIs), and gauze bandage adhesives and adhesive removers. EPA is requesting comments on the essentiality of continued CFC use in these medical products.

(2) Technological availability of substitutes. Currently available substitutes for aerosols and other pressurized dispensers include: flammable hydrocarbons (predominantly propane and butane); other higher priced/special use flammable gases (dimethyl ether, HCFC-142b, HFC-152a); nonflammable compressed gases (such as carbon dioxide and HCFC-22 alone or in mixtures); solvent substitutes (methylene chloride and dimethyl ether/water mixtures); non-aerosol alternatives (other spray dispensers (finger pumps, trigger pumps, mechanical pressure dispensers) and non-spray dispensers (solid sticks, roll-ons, brushes, pads, shakers, powders, etc.)).

Potentially available substitutes for propellant and solvent uses of CFCs in aerosols and other pressurized dispensers include HCFCs-123, -124, and -141b and HFC-134a.

EPA recognizes that, as of the publication date of EPA's 1989 report on substitutes for aerosol uses of CFCs (see reference Alternative Formulations), a few aerosol products previously exempted from the 1978 ban may still have had problems identifying which substitutes for CFCs would be best for their specific use. EPA believes that since 1989, manufacturers have been working to identify substitutes for CFCs in all of their product areas. However, there are two specific products for which EPA does not currently have adequate substitute information to include them in the proposed ban on aerosols and other pressurized dispensers containing CFCs. These products are lubricants, coatings and cleaners using CFC-11 or CFC-113 for commercial electric and electronic uses and for aircraft maintenance uses, and release agents for molds using CFC-11 or CFC-113 in the production of plastic and elastometric materials.

As a result, EPA is not today proposing to prohibit the sale and distribution of any commercial products using CFC-11 or CFC-113 as lubricants, coatings or cleaning fluids for electrical or electronic equipment or for aircraft maintenance, or as release agents for molds used in the production of plastic and elastometric materials.

In connection with the exemptions from the 1978 ban, EPA previously imposed reporting requirements under 40 CFR 712.4 for those products which used a CFC propellant. These reporting requirements expired in 1982. Since that time the TSCA ban has functioned effectively without specific reporting requirements concerning the commercial uses of these substances. In general, EPA believes that, as a result of the 1978 ban, noncommercial use of CFC-containing lubricants, coatings, aircraft maintenance products and mold release agents is currently negligible. EPA has proposed recordkeeping requirements for commercial uses of CFC-containing cleaning fluids for electronic and photographic equipment but believes that no additional recordkeeping or reporting requirements are necessary to accompany the exemption of lubricants, coatings or aircraft maintenance products. EPA request comment on the need for additional recordkeeping requirements, the availability of substitutes and the essentiality of CFC use in these products.

(3) Safety and health. Hydrocarbons are flammable. Manufacturers must take special safety precautions including appropriate ventilation when using these substances. Hydrocarbons are also volatile organic compounds (VOCs) which can contribute to the formation of ground-level air pollution. States must consider VOC emissions in meeting requirements for State Implementation Plans (SIPs) to attain the ground-level ozone National Ambient Air Quality Standards.

HCFCs (particularly -141b) and methyl chloroform, although they have much less effect on stratospheric ozone than CFCs, do have measurable ozone-depletion potentials. (See listing notice 56 FR 2420; January 22, 1991.) These substances are limited elsewhere in title VI.

Methylene chloride is classified by EPA as a B2 (probable human) carcinogen with an Occupational Safety and Health Administration Permissible Exposure Limit (OSHA PEL) of 25 parts per million. Appropriate worker health and safety practices must be followed by aerosol and pressurized dispenser manufacturers in those states that allow the use of this chemical.

EPA believes that none of these health and safety issues described above are persuasive enough to preclude the identification of CFC-use in aerosols and other pressurized dispensers as a nonessential product under the requirements of section 610. However, EPA does not necessarily advocate all substitutes currently being used by manufacturers in place of CFCs. EPA intends to carefully examine the issue of safe alternatives under regulations to implement section 612.

(4) Other relevant factors. Propellant uses of CFCs have been banned under TSCA since 1978. The excise tax provides a continuing incentive for CFC aerosol and pressurized dispenser products either exempted or excluded from the 1978 ban to switch to substitutes. As a result, EPA anticipates minimal future economic impact from banning aerosols and other pressurized dispensers containing CFCs, with the possible exception of "diamond grit spray." This product was exempted from the 1978 ban for economic reasons. It can use HCFC-22 as a propellant but economic issues may still exist. (See Background Document.) The Agency requests comment on the economic impact of banning the use of CFCs in diamond grit spray.

(5) Proposed action. Based upon consideration of the above criteria, EPA believes that CFC use in aerosols and other pressurized dispensers is nonessential and today proposes to ban the use of CFCs in this product.

c. *Residential fire extinguishers containing halons.* EPA is today seeking comment on whether to include a ban on residential fire extinguishers containing halons in its final action under section 610. Halons are brominated compounds that exhibit exceptional fire fighting

effectiveness, but have ozone-depletion potentials that are significantly higher (3 to 10 times greater) than CFCs. They are electrically nonconductive, dissipate quickly leaving no residue, and have proven to be generally safe for human exposure in most fire situations. This unique combination of properties has led to their selection as the agent of choice for several fire protection situations, including: computer, communications, and electronic facilities; museums; engine spaces on ships and aircraft; and ground protection of aircraft. Portable fire extinguishers using halons had also achieved popularity in some countries for residential use, but according to manufacturers sales have decreased dramatically (70 percent) since 1987. Residential usage was estimated by the 1989 UNEP technical options report as ten percent of halon 1211 worldwide usage. In the U.S., residential use was estimated at seven percent (200 metric tons) of halon 1211 in 1985.

The product category of residential halon fire extinguishers includes two product types: Self-expelling factory sealed fire extinguishers with crimped valves containing halon 1211 alone or in mixture with 1301 (representing 90 percent of the residential market), and "noncommercial" portable refillable fire extinguishers with threaded valves containing halon 1211 (representing ten percent of the residential market). As with the cleaning fluids for electronic and photographic equipment, tax exempt identification numbers could be used to distinguish commercial from noncommercial sales of portable halon fire extinguishers.

EPA first raised the issue of restricting the sale of portable halon fire extinguishers for home use in an Advanced Notice of Proposed Rulemaking published August 12, 1988 (53 FR 30604). EPA raised this issue because at that time small halon extinguishers were relatively inexpensive and EPA believed that, despite their harmful effects on stratospheric ozone, halon units were purchased for applications (e.g., residential protection), where other fire extinguishing agents could have been used. Since 1988 several states, including Vermont, Oregon and New York, have passed laws banning the sale of residential fire extinguishers containing halons. In addition, Germany, Canada and, in the U.S., the South Coast Air Quality Management District, have all published notices proposing, or stated their intention to propose, to ban the sale of residential fire extinguishers containing halons.

EPA believes that halon substitutes will be available for most applications in the near future.

In response to the most recent data of increased ozone depletion released by UNEP and the World Meteorological Organization (WMO), the largest producer of ozone-depleting substances announced on October 22, 1991 that it will phase out its production of halons by year-end 1994. The company stated in its press release that "The data included in this recent assessment underscore the urgency for a more rapid and aggressive response." The company also stated that it is "committed to continue its development of alternatives and to work with customers in achieving a rapid and safe phaseout." EPA believes this announcement indicates that halon substitutes will be available for all applications in the near future.

In 1994 the excise tax on halons is scheduled to rise from $0.25 to $7.95 per pound for halon 1211 and $26.50 per pound for halon 1301 as a result of their extremely high ozone-depletion potentials (ODPs). EPA recognizes that this dramatic increase in the cost of using halons could raise the price of residential halon fire extinguishers such that, depending on the price elasticity of demand for these products, sales could cease on their own at that time.

If this expectation is correct, a prohibition on the sale of this product through rulemaking effective November 15, 1992 would effectively accelerate the phase-out of this product by 14 months. EPA has received information from industry representatives that it would be extremely disadvantageous to the industry to require a total phaseout of halon use in residential fire extinguishers prior to January 1, 1994.

EPA is seeking comment on whether the use of halon in residential fire extinguishers meets the criteria specified by section 610 for identifying a product as "nonessential," i.e., on the basis that effective substitute products are technologically available, considering the issues of safety and human health. EPA is also seeking comment on whether a ban is unnecessary because the expected increase of the excise tax on halons in 1994 may clear the market of this product in advance of the 2000 phase-out of all halon products. As such, EPA reiterates the request for comment on its interpretation of what factors should be considered in the definition of a nonessential product. (See subparts III.B.2 and 3.)

(1) Purpose or intended use. Halon 1211 (alone and in blend with 1301) can be used in portable fire extinguishers for the home or noncommerical vehicle (car, camper, boat, et cetera). EPA considers the purpose of residential fire extinguishers to be very important. However, EPA believes that the substantial downturn in the market for halon residential fire extinguishers, combined with the large imminent tax burden on these substances resulting from their extremely high ozone-depletion potentials, raises questions as to whether the intended use of halons in this product area is nonessential, and whether a ban is necessary.

(2) Technological availability of substitutes. Currently available substitutes include ammonium phosphate-based multipurpose dry chemical, powders and water. These product substitutes are rated for different types of fires. For example, multipurpose dry chemical is rated for all three types: A (wood), B (grease) and C (electrical); while residential halon extinguishers are only rated for B and C type fires. EPA requests comment on the effectiveness of halons and the substitutes on the different types of fires.

Dry chemical and powders differ from halons in their composition and clean up procedures. For example, while halons disperse to the ambient air after use, dry chemical and powder fire extinguishers may require some clean up in order to prevent corrosion of electronic equipment in the area.

EPA believes, however, that these extinguishers require similar routine maintenance. Dry chemical and powder units require routine checks to ensure that the substances have not caked. Similarly, recent EPA research indicates that halon fire extinguishers generally leak through the valve between 1.0 and 1.5 ounces per year. EPA believes that the reliability of all UL inspected residential fire extinguishers is very high, but that these products should be used and maintained according to manufacturers' instructions in order to retain maximum effectiveness.

As discussed above, and in the background document accompanying this proposed rule, EPA recognizes that no extinguisher is perfect for every possible fire situation. EPA is seeking comment on whether multipurpose dry chemical, powders and water are effective available alternatives to the use of residential halon fire extinguishers.

(3) Safety and health. EPA believes that fire protection is itself an important health and safety issue. As such, EPA requests comment on any health or safety impacts of restricting the

availability of residential halon fire extinguishers.

EPA is not aware of any safety or health problems with regard to the use of multipurpose dry chemical, powder or water. However, halon extinguishers can produce toxic gases, especially when used on very hot fires. The National Fire Protection Association (NFPA) suggests no minimum fire temperature for this hazard but EPA believes that the toxic results of halon decomposition will be greater on hotter fires. According to the NFPA, "their decomposition products can be hazardous . . . operators and others should avoid breathing the gases produced by thermal decomposition of the agent." (NFPA 10, Appendix A, Section A-2-1.)

(4) Other relevant factors. The cost of a residential halon extinguisher unit (average size 14 to 80 ounces) is significantly higher than the cost of other fire protection products, including multipurpose dry chemical unit (average size 32 to 80 ounces). For this reason, EPA believes that a ban of residential halon fire extinguishers would have little cost impact on consumers.

(5) Proposed action. EPA is not today proposing to ban the use of halons in residential fire extinguishers. EPA is instead seeking comment on whether halon use in residential fire extinguishers should be banned in EPA's final action implementing the requirements of section 610. EPA specifically requests comment on the extent to which other fire extinguishing agents (such as multipurpose dry chemical) are available substitutes to halon in residential units, in terms of effectiveness, relative health and safety issues and economic impact.

IV. Additional Information

A. Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

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

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

(3) 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.

EPA has determined that this proposed regulation does not meet the definition of a major rule under E.O. 12291 and has therefore not prepared a formal regulatory impact analysis. EPA has instead prepared a background document (see reference Background Document in Docket A-91-39) which includes a qualitative study of the economic impact of this proposed regulation for each product identified as nonessential and prohibited from sale or distribution.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Agency believes that the regulation, if promulgated, will not have a significant impact on a substantial number of small entities and has therefore concluded that a formal RFA is unnecessary. A qualitative treatment of potential impacts on small entities is included in EPA's background document accompanying this regulation.

EPA believes that most companies in the industries affected by this proposed regulation have already ceased using class I substances. In addition, EPA believes that the rising excise tax and the scarcity resulting from the required incremental reductions of these substances will provide a continually increasing incentive to switch to substitutes for those companies that have not already done so. The prohibition of sales to noncommercial users in the case of two products identified in today's proposed regulation (CFC-containing cleaning fluids and residential halon fire extinguishers) would still allow manufacturers to continue to market their products to commercial users with little or no impact. Finally, the full phase-out in the year 2000 of the production and import of class I substances provides a *de facto* ban on all products using these substances. This phase-out date may be accelerated by EPA under section 606 of the Clean Air Act, as amended.

For the purposes of this proposed regulation, EPA believes that identifying companies by Standard Industrial Classification (SIC) code is inappropriate because most of the affected products represent only a small fraction of the products within each SIC code. In addition, since most manufacturers have already ceased using class I substances, EPA was identifying only a few companies within each classification. Due to the small number of potentially affected industries, the definition of companies as large or small is based for the most part on the characterization of manufacturing process by industry contacts, rather than on a standardized measure such as number of employees.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule will be 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 document has been prepared by EPA (ICR No. 1592.01) and is contained in the Docket to this rulemaking. A copy may be obtained by writing to the Information Policy Branch, U.S. Environmental Protection Agency, 401 M Street, SW. PM-223Y; Washington, DC 20460 or by calling (202) 260-2740.

Public recordkeeping burden for this collection of information is estimated to be 1.38 hours per affected distributor of commercial CFC-containing cleaning fluids, including time to maintain the list of commercial buyers and to prepare for and admit inspectors.

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, U.S. EPA at the address given above 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.

V. Rererences

United Nations Environment Programme. Aerosols, Sterilants and Miscellaneous Uses of CFCs: Report by the Technical Options Committee (June 30, 1989).

United Nations Environment Programme. Final Report of the Halons-Technical Options Committee (August 11, 1989).

United Nations Environment Programme. Flexible and Rigid Foams Technical Options Report (June 30, 1989).

United States Environmental Protection Agency. Alternative Formulations to Reduce CFC Use in U.S. Exempted and Excluded Aerosol Products (November 1989).

United States Environmental Protection Agency. Background Document on Identification of Nonessential Products that Release Class I Substances (July 1, 1991).
United States Environmental Protection Agency. Essential Use Determination—Revised: Support Document Fully Halogenated Chlorofluoroalkanes (March 17, 1978).
United States Environmental Protection Agency. Handbook for Reducing and Eliminating Chlorofluorocarbons in Flexible Polyurethane Foams (April 1991).

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution control, chemicals, Exports, Imports, Reporting and recordkeeping requirements.

Dated: January 7, 1992.

William K. Reilly,

Administrator.

Title 40, Code of Federal Regulations, part 82, is proposed to be amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7671–7671(q).

2. Part 82 is amended by adding subpart C to read as follows:

Subpart C—Ban of Nonessential Products

Sec.
82.60 Purpose.
82.62 Definitions.
82.64 Prohibitions.
82.66 Nonessential products and exceptions.
82.68 Recordkeeping requirements for distributors of certain products intended for commercial use.

Subpart C—Ban of Nonessential Products

§ 82.60 Purpose.

The purpose of these regulations is to implement the requirements of sections 608 and 610 of the Clean Air Act Amendments of 1990 on emission reductions and nonessential products.

§ 82.62 Definitions.

(a) *Chlorofluorocarbon* means any substance listed as class I group I or class I group III in 40 CFR part 82, appendix A to subpart A.[1]

(b) *Commercial,* when used to describe the consumer of a product, means a person that has one of the following identification numbers—

(1) a federal employer identification number

(2) a state sales tax exemption number

(3) a local business license number and that uses the product for commercial purposes.

(c) *Consumer,* when used to describe a person taking action with regard to a product, means the ultimate commercial or noncommercial purchaser, recipient or user of a product.

(d) *Distributor,* when used to describe a person taking action with respect to a product:

(1) Includes distribution in commerce for export from the United States and

(2) Means the seller of a product to a consumer.

(e) *Product* means an item or category of items manufactured from raw or recycled materials which is used to perform a function or task.

(f) *Release* means to emit into the environment during the manufacture, use, storage or disposal of a product.

§ 82.64 Prohibitions.

Effective November 15, 1992, no person may sell or distribute, or offer for sale or distribution, in interstate commerce any product identified as being nonessential in § 82.66.

§ 82.66 Nonessential products and exceptions.

The following products which release a class I substance as defined in 40 CFR part 82, appendix A to subpart A [2] are identified as being nonessential and the sale or distribution of such products is prohibited under section 82.64—

(a) Any plastic party streamer or noise horn which is propelled by a chlorofluorocarbon, including but not limited to—

(1) String confetti
(2) Marine safety horns
(3) Sporting event horns
(4) Personal safety horns
(5) Wall-mounted alarms used in factories or other work areas
(6) Intruder alarms used in homes or cars

(b) Any cleaning fluid for electronic and photographic equipment which contains a chlorofluorocarbon including but not limited to liquid packaging, solvent wipes, solvent sprays, and gas sprays, except for those sold or distributed to a commercial user.

(c) Any plastic flexible or packaging foam product which is manufactured with or contains a chlorofluorocarbon, including but not limited to—

(1) Open cell polyurethane flexible slabstock foam
(2) Open cell polyurethane flexible molded foam
(3) Open cell rigid polyurethane poured foam
(4) Closed cell extruded polystyrene sheet foam
(5) Closed cell polyethylene foam
(6) Closed cell polypropylene foam

(d) Any aerosol product or other pressurized dispenser, other than those specified above, which contains a chlorofluorocarbon, including but not limited to household, industrial, automotive and pesticide uses, except—

(i) Contraceptive vaginal foams
(ii) Lubricants for pharmaceutical and tablet manufacture
(iii) Metered dose inhalation devices
(iv) Gauze bandage adhesives and adhesive removers
(v) Commercial products using CFC–11 or CFC–113 as lubricants, coatings or cleaning fluids for electrical or electronic equipment.
(vi) Commercial products using CFC–11 or CFC–113 as lubricants, coatings or cleaning fluids for aircraft maintenance.
(vii) Release agents for molds using CFC–11 or CFC–113 in the production of plastic and elastomeric materials.

§ 82.68 Recordkeeping requirements for distributors of certain products intended for commercial use.

(a) Every person who after November 15, 1992, sells or distributes the following products must keep records as defined in this section—

(1) Any cleaning fluid for commercial electronic and photographic equipment which contains a chlorofluorocarbon.

(2) [Reserved]

(b) A record is required to be kept on file by the distributor for each affected product purchased by the distributor and must contain the following information:

(1) Name of the person or business who supplied the product
(2) Date of transaction
(3) Quantity of product purchased

(c) A record is required to be kept on file by the distributor for each person who purchases the product from the distributor and must contain the following information:

(1) Name of the person or business
(2) Business address
(3) Commercial identification number
(4) Date of transaction
(5) Quantity of product purchased

(d) Records required under this section must be maintained by the distributor for a period of no less than three years.

[FR Doc. 92–945 Filed 1–15–92; 8:45 am]
BILLING CODE 6560–50–M

[1] 40 CFR part 82, appendix A to subpart A is proposed in the **Federal Register** issue of Monday, September 30, 1991 (56 FR 49580).

[2] See footnote 1 to § 82.62(a).

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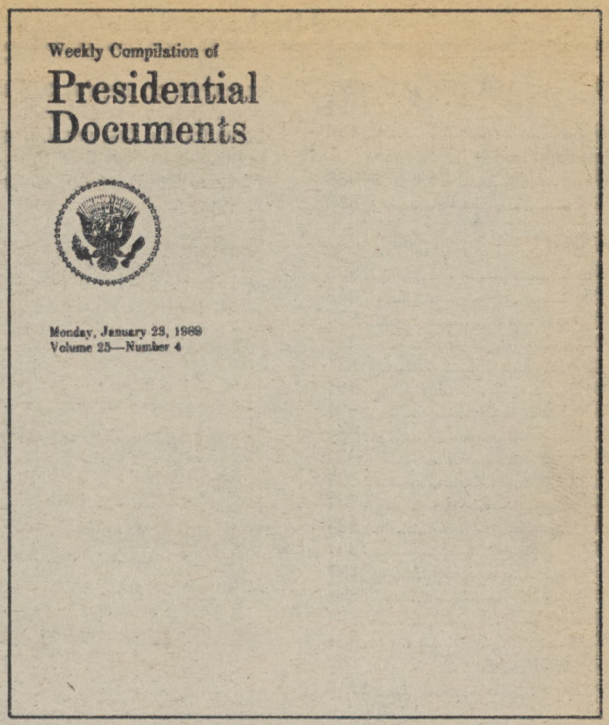

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