AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

12–3–92
Vol. 57 No. 233
Pages 57095–57320

federal register

Thursday
December 3, 1992

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

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

WHO: The Office of the Federal Register.

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

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

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

ALBUQUERQUE, NM

WHEN: December 8, at 9:00 am

WHERE: University of New Mexico
Continuing Education Bldg., Room I
1634 University Blvd., NE
Albuquerque, NM

RESERVATIONS: Julie Stone
505–768–3532

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

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1924

RIN 0575–AB11

Construction and Repair

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to implement the provisions of the Cranston-Gonzalez National Affordable Housing Act, to remove a sentence that restricts random development of sites in open country. A paragraph is added to explain site approval in remote rural areas. The intended effect of this action is to strengthen the Agency's mission of rural development.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Billy J. Chapman, Senior Loan Specialist, at Farmers Home Administration, USDA, room 5464, South Agriculture Building, 14th and Independence SW., Washington, DC 20250, Telephone (202) 720–1485.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be nonmajor because there is no substantial change from practices under existing rules that would have an annual effect on the economy of $100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions or significant adverse effects on competition, employment, productivity, innovation or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Background

A proposed rule was published in the **Federal Register** (56 FR 28350) on June 20, 1991. It proposed to remove language from the regulation regarding random development of sites in open country, and include language that allows approval of such sites. The public was invited to comment on the proposed rule until August 19, 1991. Two comments were received from the public and were carefully considered. This final rule is published as proposed without changes.

Discussion of Comments (56 FR 28350)

The two comments received from the public were both addressing the same issues. Both state that unless additional amendments are made to the regulations, FmHA will continue to deny a loan on the grounds that the site is not conveniently located to various services. They further emphasize that FmHA should not distinguish a site located in a remote rural area from that located in a small town on the basis other than the nature of the site and its use for housing as opposed to the proximity of the site to various services.

FmHA disagrees with the conclusions reached by the commentators and maintains that the change made meets the full intent of the law and is sufficient to stop denial of loans just because they are remote. The change removed the impediment in the regulation which barred making, insuring, or guaranteeing a loan because the property is excessively rural in character or excessively remote. With the change, any sites, whether in a remote rural area or not, can qualify if that site provides a desirable, safe, functional, convenient, and attractive environment for the family. It also treats all sites alike with regard to market demand. The changes requested by the commentators would promote the use of remote sites in lieu of sites in established communities.

Regulatory Flexibility Act

La Verne Ausman, Administrator of Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial number of small entities because the regulatory changes affect FmHA processing and servicing of insured and guaranteed rural housing loans.

Environmental Impact Statement

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

Intergovernmental Consultation

For the reason set forth in the final rule related Notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Civil Justice Reform

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

Program Affected

This change affects a program listed in the catalog of Federal Domestic Assistance under 10.410, Very Low and Low Income Housing Loans.

List of Subjects in Part 1924

Housing standards, Low and moderate income housing, Rural areas.

Therefore, part 1924, chapter XVIII, title 7 Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for part 1924 continues to read as follows:

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

Subpart C—Planning and Performing Site Development Work

2. Section 1924.107 is amended by revising the introductory text of paragraph (e), paragraph (e)(1)(iii), and adding paragraph (e)(1)(iv) to read as follows:

§ 1924.107 Location.

* * * * *

(e) A scattered site must be planned and developed under this subpart, subpart A of part 1944, and subpart G of part 1940 of this chapter, with particular emphasis on location as specified in § 1940.304 of this chapter. A scattered site must comply with all of the following:

(1) * * *

(iii) May be a site located within a subdivision which has HUD or VA acceptance that meets the requirements of § 1924.119(c) of this subpart, or

(iv) May be a site located in open country or a remote rural area.

* * * * *

Dated: November 4, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92–29186 Filed 12–2–92; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–27–AD; Amendment 39–8429; AD 92–26–02]

Airworthiness Directives; Piper Aircraft Corporation PA–31 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 80–20–04, which currently requires repetitive inspections of the engine baffle seals to ensure that they are all positioned properly on certain Piper Aircraft Corporation (Piper) PA–31 series airplanes, and, as terminating action for the repetitive inspections, reinforcement of any baffle seal that is positioned improperly. Several reports have been received of improperly positioned baffles that had been reinforced. This action will (1) retain the inspection requirement of AD 80–20–04, but will not allow for a termination of the repetitive inspections; and (2) allow the option of the reinforcement or the installation of thicker baffle seals if baffle seals are improperly positioned. The actions specified by this AD are intended to prevent improper sealing of the baffle seals to the engine cowling, which could result in high engine operating temperatures.

DATES: Effective January 22, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 1993.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Craft-Lloyd, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–3810; Facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Piper PA–31 series airplanes was published in the **Federal Register** on June 5, 1992 (57 FR 23978). The action proposed to supersede AD 80–20–04, Amendment 39–3925 (45 FR 64168, September 29, 1980), with a new AD that would retain the inspection and reinforcement requirements of AD 80–20–04, but would not allow for the termination of the repetitive inspections. The reinforcement would be accomplished in accordance with Piper Service Bulletin (SB) No. 693, dated July 28, 1980.

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

One commenter believes that accomplishment of the procedures in Piper SB No. 693 is not the solution to the baffle problem, particularly with older baffle seals. This commenter states that these procedures have been successful only in a few instances, and recommends that this requirement be deleted from the proposed AD. The FAA concurs that the reinforcement specified in Piper SB 693 is not a modification that provides a long-term solution to the baffle problem, which is why the FAA has included the 50 hour time-in-service (TIS) repetitive inspection requirement in the proposed AD. Therefore, the proposed AD is unchanged as a result of this comment.

This same commenter recommends (1) increasing the width of the baffle seals 1.5 inches; and (2) utilizing neoprene fabric instead of the felt seal used under the engine oil pan/induction chamber, against the engines on the front baffles, and at the engine mounting lord mounts. The commenter suggests that patterns of this neoprene fabric be provided so that this fabric may be utilized instead of the expensive factory replacement baffles. The FAA does not concur because (1) experience has shown that longer seals will either sag down or fold over, which leaves a gap between the baffle and the nacelle and prevents a proper air seal; and (2) the felt around the engine is not only an air seal, but also serves as a chaffing protection between the baffle and engine or nacelle to prevent metal to metal contact (neoprene fabric may not function the same way). The proposed AD remains unchanged as a result of these comments.

Another commenter states that, based upon experience with the inspection and modification of baffle seals in accordance with Piper SB No. 693, the baffle seals fold back because (1) the factory installed baffle material is too thin and is easily folded back when the cowls are reinstalled without carefully positioning the seals forward; (2) the baffle seals are cut too short and are blown back by air pressure; and (3) when the reinforcement of the baffle seals is accomplished in accordance with Piper SB No. 693, the forward baffle deteriorates further and the weight of the reinforcement material causes the forward seal to bend or sag forward because the reinforcement is glued and riveted only to the seal and does not attach to the metal baffle. The commenter suggests that AD 80–20–04 be removed and replaced with a new AD that allows the installation of baffle seals with material that is thicker than the original Piper material, which does not break down, fold over, or lose stiffness. The FAA is aware of thicker material that will provide at least the same chaffing protection as the original material and concurs that the proposed AD should allow for this installation. Since the NPRM proposed the removal of AD 80–20–04, the only change to the proposal will be the option of installing thicker (⅛ inch) seal material in accordance with Piper Kit 764 093 as referenced in Piper Service Letter No. 875, dated May 11, 1981, or an FAA-approved equivalent, and then repetitively inspecting the baffle seals at 100-hour TIS intervals instead of 50-hour TIS intervals.

No comments were received on the FAA's determination of the cost to the public.

After careful review of all available information including the service information and the comments discussed above, the FAA has

determined that air safety and the public interest require the adoption of the rule as proposed except for (1) the option of installing thicker (⅛ inch) seal material in accordance with Piper Kit 764 093 as referenced in Piper Service Letter No. 875, dated May 11, 1981, or an FAA-approved equivalent, and then repetitively inspecting the baffle seals at 100-hour TIS intervals instead of 50-hour TIS intervals; and (2) minor editorial corrections. The FAA has determined that the addition of this installation option and the minor editorial corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 2,448 airplanes in the U.S. registry will be affected by this AD, that it will take approximately .5 workhours per airplane to accomplish the required inspection, and that the average labor rate is approximately $55 an hour. Since an owner/operator who holds a private pilot certificate as authorized by FAR 43.7 is allowed to accomplish the required inspection, the only cost impact upon the public would be the time it takes to accomplish this inspection.

The airplane operator has the option of installing thicker baffle seals and then extending the repetitive inspection interval time from 50 hours TIS to 100 hours TIS. This installation will take approximately 1 workhour to accomplish at an average labor rate of $55 an hour. Parts cost $1,568. Based on these figures, the cost impact upon any U.S. operator who wishes to accomplish this baffle seal installation is $1,623 per airplane. The only difference between this AD and AD 80–20–04, which will be superseded by this action, is the time incurred through repetitive interval inspections and the cost to install thicker baffle seals, if desired. If this installation were accomplished, the time incurred through repetitive interval inspections will be reduced 50 percent.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 80–20–04, Amendment 39–3925 (45 FR 64168, September 29, 1980), and by adding the following new airworthiness directive:

92–26–02 Piper Aircraft Corporation: Amendment 39–8429; Docket No. 92–CE–27–AD. Supersedes AD 80–20–04, Amendment 39–3925.

Applicability: Model PA–31, PA–31–300, and PA–31–325 airplanes (serial numbers 31–2 through 31–8012089), and Model PA–31–350 airplanes (serial numbers 31–5001 through 31–8052199), certificated in any category.

Compliance: Required initially within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 80–20–04, Amendment 39–3925), and thereafter as indicated.

To prevent improper sealing of the baffle seals to the engine cowling, which could result in high engine operating temperatures, accomplish the following:

(a) Visually inspect the engine baffle seals for proper positioning by using a light and looking in air inlets and access doors to ensure that forward seals and lower aft seals are all facing forward and not blown back.

(b) If baffle seals are improperly positioned (blown back), prior to further flight, accomplish one of the following:

(1) Reinforce the seals in accordance with the instructions in Piper Service Bulletin No. 693, dated July 28, 1980, and reinspect as specified in paragraph (a) of this AD at intervals not to exceed 50 hours TIS.

(2) Install thicker baffle seals in accordance with Piper Kit 764 093 as referenced in Piper Service Letter 875, dated May 11, 1981, or an FAA-approved equivalent, unless already accomplished, and reinspect in accordance with paragraph (a) of this AD at intervals not to exceed 100 hours TIS.

Note 1: The accomplishment of the baffle seals reinforcement or installation in accordance with paragraph (b)(1) or (b)(2), respectively, does not eliminate the repetitive inspection requirement of this AD.

(c) The repetitive inspections required by paragraphs (b)(1) and (b)(2) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by FAR 43.7, and must be entered into the aircraft records showing compliance with this AD in accordance with FAR 43.11.

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

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(f) The reinforcement required by this AD shall be done in accordance with Piper Service Bulletin No. 693, dated July 28, 1980. The installation required by this AD shall be accomplished in accordance with Piper Kit 764 093 as referenced in Piper Service Letter No. 875, dated May 11, 1981. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–8429) supersedes AD 80–20–04, Amendment 39–3925.

(h) This amendment (39–8429) becomes effective on January 22, 1993.

Issued in Kansas City, Missouri, on November 24, 1992.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–29259 Filed 12–2–92; 8:45 am

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 117

[CGD7–92–44]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule with request for comments.

SUMMARY: The Coast Guard is temporarily changing the regulations governing four drawbridges for 60 days beginning December 1, 1992, to test proposed revisions to their operating schedules. Three of the drawbridges are over the Gulf Intracoastal Waterway; the Ringling Causeway Drawbridge, mile 73.6, at Sarasota, the Cortez Drawbridge, mile 87.4, at Cortez, and the Anna Maria Drawbridge, mile 89.2, at Bradenton. The fourth drawbridge is the State Road 789 bridge over New Pass, mile 0.0, at Sarasota.

DATES: Comments must be received on or before January 15, 1993. This rule is effective on December 1, 1992, and terminates on January 31, 1992.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments the telephone number is (305) 536–4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Ian MacCartney, Project Manager, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD7–92–44) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Ian MacCartney at the address under **"ADDRESSES."** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Ian MacCartney, Project Manager, and Lieutenant J.M. Losego, Project Counsel.

Background and Purpose

On May 8, and June 29, 1992, the Coast Guard published four notices of proposed rulemaking entitled Drawbridge Operation Regulations in the **Federal Register** (CGD7–92–25, Drawbridge Operation Regulations; Gulf Intracoastal Waterways, FL. 57 FR 19833; CGD7–92–26, Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL. 57 FR 19834; CGD7–92–28, Drawbridge Operation Regulations; New Pass, FL. 57 FR 19835; and CGD7–92–27, Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL. 57 FR 28816). This 60 day test is being made to determine whether the proposed changes to the regulations would relieve highway traffic congestion while still meeting the reasonable needs of navigation.

Discussion of Proposed Amendments

The Ringling drawbridge presently opens on signal except that from 7:30 a.m. to 6 p.m., the draw need open only on the hour and half hour. In response to a request from the Sarasota/Manatee Metropolitan Planning Organization (MPO) and the Florida Department of Transportation (FDOT), the bridge owner, the half hour opening schedule during this test will commence 30 minutes earlier at 7 a.m. instead of 7:30 a.m. This should reduce early morning traffic congestion caused by bridge openings.

The Cortez and Anna Maria drawbridges presently open on signal; except that from 9 a.m. to 6 p.m. on Saturdays, Sundays and Federal holidays, the draw need open only on the hour, quarter hour, half hour and three-quarter hour. From December 1 to May 31, Monday through Friday, from 9 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour. In response to a request from the MPO and FDOT for a 30 minute opening schedule, the Coast Guard has evaluated the impact on navigation and highway traffic and determined that a 20 minute schedule may be more appropriate.

The New Pass drawbridge presently opens on signal; except that from 7 a.m. to 6 p.m. Monday through Friday, except Federal holidays, and from 10 a.m. to 6 p.m. on Saturdays, Sundays, and Federal holidays, the draw need open only on the hour, 20 minutes past the hour and 40 minutes past the hour.

In response to a request from the MPO and FDOT, the Coast Guard evaluated the navigational impacts and determined that the strong cross winds, heavy currents and extensive shoaling near the bridge create holding conditions that could become unsafe for navigation if the opening schedule is extended to 30 minutes. The Coast Guard cannot support a 30 minute opening schedule but does propose extending the existing 20 minute schedule. These changes should reduce traffic delays without unreasonably impacting navigation.

Regulatory Evaluation

This rule is considered to be not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Since tugs with tows are exempt from this proposal, the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In § 117.287, paragraphs (c), (d) (1) and (2) are temporarily revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(c) The draw of the Ringling Causeway (SR 780) bridge, mile 73.6, at Sarasota, shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need open only on the hour and half hour.

(d)(1) The draw of the Cortez (SR 684) bridge, mile 87.4, shall open on signal; except that from 7 a.m. to 6 p.m., the draw need open only on the hour, twenty minutes past the hour and forty minutes past the hour.

(2) The draw of the Anna Maria (SR 64) bridge, mile 89.2, shall open on signal; except that from 7 a.m. to 6 p.m., the draw need open only on the hour, twenty minutes past the hour and forty minutes past the hour.

* * * * *

3. Section 117.311 is temporarily revised to read as follows:

§ 117.311 New Pass.

The draw of the State Road 789 bridge, mile 0.0, at Sarasota, shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need open only on the hour, twenty minutes past the hour and forty minutes past the hour. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property shall, upon proper signal, be passed at any time.

Dated: November 12, 1992.

William P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 92–29348 Filed 12–2–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Baltimore, MD Regulation 92–05–32]

Safety Zone Regulation: Little Round Bay, Severn River, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing safety zones for the Southern Distribution Office Department of Baltimore Gas and Electric in the Little Round Bay region of the Severn River, MD. Baltimore Gas and Electric will be installing three conductor, submarine cables across the Little Round Bay. This installation will begin from St. Helena Island and continue west to the mainland at Ridgley Road in Anne Arundel County, MD. These safety zones are needed to protect commercial and recreational vessel traffic and to provide for the safety of life and property on navigable waters. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on November 17, 1992, at 8 a.m. and terminates at 5 p.m., December 11, 1992, unless sooner terminated by the Captain of the Port, Baltimore, Maryland. Hours of operation will be from 8 a.m. to 5 p.m. daily.

FOR FURTHER INFORMATION CONTACT: LTJG Mark R. Williams, U.S. Coast Guard. Marine Safety Office Baltimore, U.S. Custom House, 40 South Gay Street, Baltimore, Maryland 21202–4022, (410) 962–5105.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of **Federal Register** publication. Specifically, the Southern Distribution Department of Baltimore Gas and Electric Company requested Coast Guard assistance on October 20, 1992, leaving insufficient time to publish an NPRM in advance of the event. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent any damage to vessels or equipment which could be caused by vessels interfering with or underway near the cable operation.

Drafting Information

The drafters of this regulation are LTJG Mark R. Williams, project officer for the Captain of the Port, Baltimore, Maryland and LCDR K.B. Letourneau, project counsel, Fifth Coast Guard District legal staff.

Discussion of Regulation

On October 20, 1992 Baltimore Gas and Electric requested Coast Guard assistance during the installation of three conductor, submarine cables across the Little Round Bay region of the Severn River Maryland to take place November 16, 1992 to December 11, 1992. The operation will include diving operations and a tug boat and barge with a cable reel placed upon the barge. The safety zones will consist of a circle with a 100 yard radius around the diving platform; a circle with a 100 yard radius around the tug and a circle with a 100 yard radius around the barge. The safety zone will encircle the diving platform, the tug and its barge only, as work progresses across the bay. The work area is described as follows: A line drawn from latitude 39–02–30 North, longitude 076–33–58 West westward to latitude 39–02–33 North, longitude 076–34–27 West. Baltimore Gas and Electric Company will have the tug "Little Blu" and the diving platform on station, monitoring channel 13 VHF–FM during the laying of the cable and the embedding of the cable in the river bottom.

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

Regulatory Evaluation

This regulation is not considered major under Executive Order 12291 and is non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that

the emergency rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231: 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new section 165.T0551 is added to read as follows:

§ 165.T0551 Safety Zones: Little Round Bay, Severn River, MD.

(a) *Location:* The following areas are safety zones: A circle with a 100 yard radius around the Baltimore Gas & Electric Co. diving platform, a circle with a 100 yard radius around the tug "Little Blu" and a circle with a 100 yard radius around the barge as it transits from St. Helena Island to the mainland at Ridgley Road, Anne Arundel County, MD. The operating area of this cable will be from latitude 39–02–30 North, longitude 076–33–58 West and latitude 39–02–33 North, longitude 076–34–27 West, a line drawn between these points around the diving platform and the tug as it transits, but will not severely restrict smallcraft traffic.

(b) *Effective Date:* This regulation becomes effective on November 17, 1992, at 8 a.m. and terminates at 5 p.m., December 11, 1992, unless terminated sooner by the Captain of the Port, Baltimore, Maryland. Hours of operation will be from 8 a.m. to 5 p.m. daily.

(c) *Regulation:*

(1) In accordance with the general regulations in 33 CFR 165.23 of this part, entry into the safety zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(3) Any spectator on any vessel may anchor outside of the regulated area specified in paragraph (2)(a) of these regulations, but may not block a navigable channel.

(d) *Definitions:* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf. The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5105.

Dated: November 17, 1992.

R.L. Edmiston,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 92–29229 Filed 12–2–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP San Francisco Regulation SF–92–10]

Safety Zone Regulation; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the waters of San Francisco Bay, California, west of the Ferry Plaza Pier during the fireworks display on December 7, 1992. The safety zone is necessary to protect the boating spectators during the event by keeping them away from the barge where the fireworks are to be launched.

EFFECTIVE DATE: This regulation becomes effective at 8:45 p.m. P.d.t., December 7, 1992, and terminates at 10 p.m., P.d.t., December 7, 1992, unless canceled earlier by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lieutenant Richard Naccara, Coast Guard Marine Safety Office, San Francisco, CA, (510) 437–3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking (NPRM) was not published for this regulation, and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to safeguard local boaters on the scheduled date.

DRAFTING INFORMATION: The drafters of this regulation are Lieutenant Richard Naccara, Project Officer for the Captain of the Port, and Captain Bruce Weule, Project Attorney, Eleventh Coast Guard District Legal Office.

DISCUSSION OF REGULATION: The event requiring this regulation is a fireworks display to be held by the Gabbiano restaurant on 7 December 1992 at or about 8:45 p.m. P.d.t. The fireworks will be launched over the water from a barge located 300 feet due west of the Ferry Plaza Pier, San Francisco, California, at position 37–47′–47″ N, 122–23′–25″ W. The Safety Zone will be the area of a square centered on the above point with the distance of 300 feet to any edge of the square. Previous fireworks displays in San Francisco Bay have attracted many boaters and a Safety Zone will provide the Captain of the Port with the authority necessary to ensure that boating spectators are not injured as a result of the fireworks display. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; and 49 CFR 1.46.

2. A new temporary section 165.T1170 is added to read as follows:

§ 165.T1170 Safety Zone: San Francisco Bay, CA.

a. *Location.* The following area is a safety zone: The waters of San Francisco Bay, California, an area encompassed by the points;

Latitude 37–47′–52″ North Longitude 122–23′–24″ West
Latitude 37–47′–48″ North Longitude 122–23′–31″ West
Latitude 37–47′–42″ North Longitude 122–23′–25″ West
Latitude 37–47′–47″ North Longitude 122–23′–19″ West

centered at 37–47′–47″ N, 122–23′–25″ W.

b. *Effective Date.* This regulation becomes effective at 8:45 p.m., P.d.t., December 7, 1992, and terminates at 10 p.m., P.d.t., December 7, 1992 unless canceled earlier by the Captain of the Port.

c. *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited

unless authorized by the Captain of the Port.

Dated: 20 November 1992.

J. M. MacDonald,

Captain, U.S. Coast Guard.

[FR Doc. 92–29347 Filed 12–2–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AF11

Expanded Benefit Payment for Certain Officers and Former Officers

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs Nurse Pay Act of 1990 requires VA (Department of Veterans Affairs) to make payments to certain military officers and former officers who were commissioned in 1977 or 1978. These regulations will acquaint the public with the way in which VA will administer these payments.

EFFECTIVE DATE: August 15, 1990.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 14488 through 14490 of the **Federal Register** of April 21, 1992, there were published interim regulations to amend 38 CFR part 21 in order to implement provisions of the Department of Veterans Affairs Nurse Pay Act of 1990 which provide for an expanded benefit payment for certain officers and former officers. Interested people were given 30 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections. Accordingly, VA is making the interim regulations permanent.

The interim regulations contained references to sections of title 38, U.S. Code. These reflected the way in which the sections were numbered before the enactment of Public Law 102–83. Since Public Law 102–83 renumbered most of those sections, the references reflect the numbering system introduced by that law. There have been no substantive changes from the interim regulations.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

VA finds that good cause exists for making these new regulations, like the provision of law they implement, retroactively effective on August 15, 1990. These regulations are intended to achieve a benefit for individuals. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of the provision of law, and might result in the denial of a benefit to someone who is entitled to it.

There is no Catalog of Federal Domestic Assistance number for this program.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 11, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21 is amended as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

1. In part 21, subpart F–2 is republished for the convenience of the reader as follows.

Subpart F–2—Officer Adjustment Benefit

Sec.

21.4700 Eligibility for benefit payments.
21.4701 Application.
21.4702 Election.
21.4703 Officer adjustment benefit payment.
21.4704 Provisions not applicable to this subpart.
21.4705 Delegation of authority.

Authority: Pub. L. 101–366, sec. 207, 104 Stat. 442.

Subpart F–2 Officer Adjustment Benefit; Officer Adjustment Benefit Program

§ 21.4700 Eligibility for benefit payment.

An individual who, during 1977 or 1978 was attending a service academy or was a member of the Senior Reserve Officers Training Corps may be eligible to receive a payment from VA for educational programs which the individual subsequently pursued, provided the individual meets the eligibility criteria stated in paragraph (a) of this section.

(a) *Benefit payment dependent upon meeting eligibility criteria.* An individual who makes application pursuant to § 21.4701 of this subpart may elect to receive a benefit payment as provided in § 21.4703 of this subpart, if the individual—

(1) Before January 1, 1977, commenced the third academic year as a cadet or midshipman at one of the service academies or the third academic year as a member of the Senior Reserve Officers' Training Corps in a program of educational assistance under section 2104 or 2107 of title 10, United States Code;

(2) Served on active duty for a period of more than 180 days pursuant to an appointment as a commissioned officer received upon graduation from one of the service academies or upon satisfactory completion of advanced training (as defined in section 2101 of title 10, United States Code) as a member of the Senior Reserve Officers' Training Corps;

(3) After that period of active duty—

(i) Was discharged or released under conditions other than dishonorable, or

(ii) Continued to serve on active duty without a break in service; and

(4) If he or she is enrolled in the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) provided under chapter 32, title 38, United States Code (subpart G of this part), submits to the Secretary of Veterans Affairs, in the form and manner as the Secretary shall prescribe, an irrevocable election to be disenrolled from that program. (See § 21.5058 and § 21.5064 of this part).

(Authority: Pub. L. 101–366, sec. 207, 104 Stat. 442) (Aug. 15, 1990)

(b) *Definitions.* For the purposes of this section—

(1) The term *service academy* means—

(i) The United States Military Academy,

(ii) The United States Naval Academy,

(iii) The United States Air Force Academy, or

(iv) The United States Coast Guard Academy;

(2) The term *active duty* has the meaning given this term by 38 U.S.C. 101(21).

(Authority: Pub. L. 101–366, sec. 207, 104 Stat. 442) (Aug. 15, 1990)

§ 21.4701 Application.

Each individual described in § 21.4700(a) of this subpart, who wishes to receive a payment as provided in § 21.4703 of this subpart, shall file an application with VA on or before December 31, 1991. The application shall be in the form prescribed by the Secretary of Veterans Affairs.

(Authority: Pub. L. 101–366, sec. 207, 104 Stat. 442) (Aug. 15, 1990)

§ 21.4702 Election.

For the purposes of this subpart VA will deem a participant in VEAP to have made an irrevocable election to be disenrolled from VEAP when the individual—

(a) Is described in § 21.4700 of this subpart, and

(b) Files an application for and an election of benefits under § 21.4701 of this subpart.

(Authority: Pub. L. 101–366, sec. 207, 104 Stat. 442) (Aug. 15, 1990)

§ 21.4703 Officer adjustment benefit payment.

(a) *Previous VEAP payments will affect the payment amount.* VA will make a payment to each individual found eligible under § 21.4700 of this subpart, who makes a timely application under § 21.4701 of this subpart, and, if required, an election under § 21.4702 of this subpart, in an amount to be determined as follows.

(1) If the individual has received educational assistance under chapter 32, title 38, United States Code, for the pursuit of a program (or programs) of education, VA will—

(i) Determine the amount of educational assistance allowance the individual would have received under chapter 34, title 38, United States Code for pursuit of that program (or programs) during the period ending on December 31, 1989;

(ii) Determine the amount of the educational assistance that the individual received under chapter 32, title 38, United States Code, for the pursuit of that program (or programs) during the same period, exclusive of the portion of that amount representing the veteran's own contribution to the VEAP fund; and

(iii) Subtract the amount determined in paragraph (a)(1)(ii) of this section from the amount determined in paragraph (a)(1)(i) of this section. If the result is a positive number, that is the amount payable under this subpart.

(2) If the individual has not received educational assistance under chapter 32, title 38, United States Code, the payment amount will equal the amount of educational assistance allowance the individual would have received under chapter 34, title 38, United States Code, for the pursuit of a program (or programs) of education if the individual had been entitled to educational assistance under that program during the period ending on December 31, 1989.

(Authority: Pub. L. 101–366, sec. 207, 104 Stat. 442) (Aug. 15, 1990)

(b) *Determining the amount payable under chapter 34.* In determining the amount payable under paragraphs (a)(1)(i) and (a)(2) of this section, VA will apply the law and regulations governing chapter 34, title 38, United States Code on the dates of the pursuit of the program (or programs) of education, except as noted in § 21.4704 of this subpart.

(Authority: Pub. L. 101–366, sec. 207, 104 Stat. 442) (Aug. 15, 1990)

§ 21.4704 Provisions not applicable to this subpart.

(a) *Some provisions of chapters 34 and 36, title 38, United States Code, do not apply in determining the officer adjustment benefit payment.*

In determining the amount of educational assistance allowance to which an individual would have been entitled under chapter 34, title 38, United States Code, the following provisions of that chapter and chapter 36, title 38, United States Code and any implementing regulations therefor are not applicable:

(1) 38 U.S.C. 3452(a) (1) and (2),

(2) 38 U.S.C. 3463,

(3) 38 U.S.C. 3471 to the extent implemented to require submission of an application before initiating a program of education,

(4) 38 U.S.C. 3482A,

(5) 38 U.S.C. 3485,

(6) 38 U.S.C. 3486,

(7) 38 U.S.C. 3495 through 3498,

(8) 38 U.S.C. 3680(d),

(9) 38 U.S.C. 3684,

(10) 38 U.S.C. 3685 (b) and (e)(1),

(11) 38 U.S.C. 3686(b), and

(12) 38 U.S.C. 5307(c).

(Authority: Pub. L. 101–366, sec. 207, 104 Stat. 442) (Aug. 15, 1990)

(b) *Applicability of requirements of chapter 34, title 38, United States Code pertaining to applications, evidence and certifications.* (1) Provisions of the Code of Federal Regulations formerly applied regarding evidence and certifications required to establish the individual's entitlement to educational assistance allowance under chapter 34, title 38, United States Code, will be applied to the extent applicable when implementing the sections in this subpart.

(2) However, in the event that a school or training establishment is unwilling or no longer able to provide necessary information, VA will accept for the purpose of the sections in this subpart any reasonable secondary evidence which the Secretary of Veterans Affairs deems appropriate to establish the claim.

(3) No provision of chapter 34, title 38, United States Code, nor any provision of the Code of Federal Regulations which implemented that chapter shall be applied to this subpart if—

(i) The provision would have required a prior claim or application or otherwise limited the timeliness of performance of a precondition to receipt of benefits under that chapter, and

(ii) Compliance with the provision could not be effected by August 15, 1990.

(4) Provisions of the Code of Federal Regulations which would have required prior approval of an individual's change of program of education do not apply in determining the payment under this subpart.

(Authority: Pub. L. 101–366, sec. 207, 104 Stat. 442) (Aug. 15, 1990)

(c) *Approval of courses.* If a course was not approved for training under chapter 34, title 38, United States Code, at the time an individual pursued it, no retroactive determination of approval will be permitted for the purpose of determining benefits payable under this subpart.

(Authority: Pub. L. 101–366, sec. 207, 104 Stat. 442) (Aug. 15, 1990)

(d) *Veteran-nonveteran student ratio requirement.* If VA determined that a course met the provisions of 38 U.S.C. 3473(d) regarding the percentage of veteran students at the time the course was pursued by an eligible individual,

no redetermination will be required as a result of the decision to pay the individual benefits under this subpart. If at the time the course was pursued by the individual VA had not determined the course's compliance with 38 U.S.C. 3473(d) regarding that percentage of veteran students, for purposes of this subpart VA will consider the course to have met that requirement.

(Authority: Pub. L. 101–366, sec. 207, 104 Stat. 442) (Aug. 15, 1990)

§ 21.4705 Delegation of authority.

Authority is delegated to the Chief Benefits Director and to supervisory or adjudicative personnel within the jurisdiction of the Education Service designated by him or her to make findings and decisions under Public Law 101–366, section 207.

(Authority: Public Law 101–366, sec. 207, 104 Stat. 442) (Aug. 15, 1990)

[FR Doc. 92–29182 Filed 12–2–92; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 21

RIN 2900–AF32

Implementation of the Persian Gulf War Veterans' Benefits Act of 1991 and the Montgomery GI Bill—Active Duty

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Persian Gulf War Veterans' Benefits Act of 1991 provides increases in the full-time rate of basic educational assistance payable to someone pursuing a program of education under the Montgomery GI Bill—Active Duty, effective October 1, 1991. These regulations implement that increase. VA also is authorized by law to set by regulation the amount of monthly educational assistance payable to someone who is pursuing a program of education at other than the full-time rate under the Montgomery GI Bill—Active Duty. Since full-time rates are increased, VA is making proportional increases to other than full-time rates. This will inform the public of the rates of educational assistance payable for this training.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 11910 through 11912 of the **Federal Register** of April 8, 1992, there were published interim final regulations which amended 38 CFR part 21 in order to implement a rate increase in the Montgomery GI Bill—Active Duty. Public comment was invited concerning the rates payable for other than full-time training. VA received no comments, suggestions or objections. Hence, VA is making these final regulations permanent. There was a typographical error in the rate in § 21.7136(b)(2) for the first six months of training. This has been corrected.

Section 337 of the Persian Gulf War Veterans' Benefits Act 1991 (Pub. L. 102–25) provides an increase in educational assistance payable under the Montgomery GI Bill—Active Duty to someone who is pursuing a full-time program of education. This increase is effective on October 1, 1991, and will last for two years. At the end of that two-year period the Secretary of Veterans Affairs may either revert to payment at the rates in effect before October 1, 1991; continue paying the new rates; or provide a percentage increase in educational assistance equal to the percentage increase in the Consumer Price Index during the 12-month period preceding June 30, 1993.

The law (38 U.S.C. 1415(a)(2)) requires the Department of Veterans Affairs (VA) to set the rate of payment of educational assistance to people pursuing programs of education at a rate other than full time. Since statutory full-time rate increases are effective October 1, 1991, we are making corresponding proportional increases in the other than full-time rates effective the same date.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. Although the increase in benefits may cost more than $100 million, the increase is caused by the underlying law which the regulations implement. The regulations themselves will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs certifies that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for this program is 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 6, 1992.

Anthony J. Principi,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subpart K is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

1. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. chapter 30, Pub. L. 98–525; 38 U.S.C. 501(c).

2. In § 21.7136 paragraph (a) and its authority citation are revised; paragraphs (b)(1) and (b)(2) and their authority citations are revised; and the introductory text to paragraph (b)(3) is revised to read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

(a) *Rates.* (1) Except as otherwise provided in this section and § 21.7137 of this part, the monthly rate of basic educational assistance payable to a veteran is the rate stated in this table.

Training	Monthly rate
Full time	$350.00.
3/4 time	262.50.
1/2 time	175.00.
Less than 1/2 but more than 1/4 time.	175.00 See § 21.7136(d).
1/4 time or less	87.50 See § 21.7136(d).

(Authority: 38 U.S.C. 3015(c), 3015(f); Pub. L. 98–525, Pub. L. 102–25) (Oct. 1, 1991)

(2) Except as otherwise provided in this section, the monthly rate of basic educational assistance payable to a veteran who is pursuing an

apprenticeship or other on-job training is the rate stated in this table.

Training period	Monthly rate
First six months of pursuit of program	$262.50
Second six months of pursuit of program	192.50
Remaining pursuit of program	122.50

(Authority 38 U.S.C. 3015, 3032(c); Pub. L. 99–576, Pub. L. 102–25) (Oct. 1, 1991)

(3) Except as otherwise provided in this section the monthly rate of basic educational assistance payable to a veteran who is pursuing a cooperative course is $280.

(Authority: 38 U.S.C. 3015(f), 3032(d); Pub. L. 100–689, Pub. L. 102–25) (Oct. 1, 1991)

(b) *Rates for veterans whose initial obligated period of active duty is less than three years.* (1) Except as otherwise provided in this section, the monthly rate of basic educational assistance payable to a veteran whose initial obligated period of active duty is less than three years and who has not served and is not committed to serve in the Selected Reserve for a period of four years is the amount stated in this table.

Training period	Monthly rate
Full time	$275.00.
3/4 time	206.25.
1/2 time	137.50.
Less than 1/2 but more than 1/4 time.	137.50 See paragraph §21.7136(d).
1/4 time or less	68.75 See paragraph §21.7136(d).

(Authority: 38 U.S.C. 3015(c); Pub. L. 98–525, Pub. L. 102–25) (Oct. 1, 1991)

(2) Except as otherwise provided in this section, the monthly rate of educational assistance payable to a veteran whose initial obligated period of active duty is less than three years and who has not served and is not committed to serve in the Selected Reserve for a period of four years, and who is pursuing an apprenticeship or other on-job training is the rate stated in this table.

Training period	Monthly rate
First six months of pursuit of program	$206.25
Second six months of pursuit of program	151.25
Remaining pursuit of program	96.25

(Authority: 38 U.S.C. 3032(c); Pub. L. 102–25)

(3) Except as otherwise provided in this section, the monthly rate of basic educational assistance payable is $220 when—

* * * * *

(Authority: 38 U.S.C. 3032(d); Pub. L. 102–25)

3. In § 21.7137 paragraphs (a) and (c)(2) and their authority citations are revised to read as follows.

§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. chapter 34.

(a) *Minimum rates.* (1) Except as provided in this section, the monthly rate of basic educational assistance will be the rate taken from the following table.

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$538.00	$574.00	$605.00	$16.00
3/4 time	404.00	430.50	454.00	12.00
1/2 time	269.00	287.00	302.50	8.50
Less than 1/2 but more than 1/4 time	[1]269.00			
1/4 time or less	[1]134.50			
Cooperative	401.60	422.00	441.60	9.20

[1] See paragraph §21.7137(b).

(Authority: 38 U.S.C. 3015(c), 3015(f); Pub. L. 98–525, Pub. L. 100–689, Pub. L. 102–25) (Oct. 1, 1991)

(2) For veterans pursuing an apprenticeship or other on-job training, the monthly rate of basic educational assistance will be the rate taken from the following table.

Training period	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st 6 months of pursuit of program	$365.25	$377.63	$388.50	$5.25
2nd 6 months of pursuit of program	248.88	258.23	265.93	3.85
3rd 6 months of pursuit of program	146.30	152.43	157.15	2.45
Remaining pursuit of program	134.40	140.18	145.43	2.45

(Authority: 38 U.S.C. 3015(d), 3015(f); Pub. L. 99–576, Pub. L. 102–25) (Oct. 1, 1991)

* * * * *

(c) * * *

(2) The following monthly rates—

(i) $538.00 for full-time training,

(ii) $404.00 for three-quarter-time training,

(iii) $269.00 for one-half-time training and training that is less than one-half, but more than one-quarter-time training, and

(iv) $134.50 for one-quarter-time training.

(Authority: 38 U.S.C. 3015(d), 3015(f); Pub. L. 98–525, Pub. L. 102–25) (Oct. 1, 1991)

[FR Doc. 92–29185 Filed 12–2–92; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AD89

Reservists Education; the Veterans' Benefits Programs Improvement Act and the Montgomery GI Bill

AGENCY: Department of Defense, Department of Transportation (Coast Guard) and Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Veterans' Benefits and Programs Improvement Act of 1988 contains several provisions which affect the Montgomery GI Bill—Selected Reserve. These include liberalizing the eligibility requirements for this program; providing less than half-time training under this program and liberalizing the standards for determining extension to a reservist's basic period of eligibility. A few of the amended regulations needed to implement this law were made final in the **Federal Register** dated March 7, 1991, on pages 9627 to 9633. These amended regulations will acquaint the public with the way in which the Department of Veterans Affairs (VA) will administer the remaining provisions of law.

EFFECTIVE DATE: The revisions to these regulations and the new regulations contained in this proposal are effective on the same date as the provisions of law on which they are based. Consequently, the revisions to 38 CFR 21.7520(b)(14) and 21.7639(b) are retroactively effective on June 1, 1989.

The revisions to all other regulations are retroactively effective on November 18, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 26951 through 26954 of the **Federal Register** of June 12, 1991, there was published a Notice of Intent to amend 38 CFR part 21 in order to implement most of the provisions of Pub. L. 100–689 which pertain to the Montgomery GI Bill—Selected Reserve. Interested people were given 30 days to submit comments, suggestions or objections. VA, the Department of Defense and the Coast Guard received no comments, suggestions or objections. Accordingly, the proposed regulations are being made final.

The Department of Veterans Affairs, the Department of Defense and the Coast Guard have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Defense, the Secretary of Transportation and the Secretary of Veterans Affairs have certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

VA, the Department of Defense and the Department of Transportation find that good cause exists for making the amendments to 38 CFR 21.7520(b)(14) and 21.7639(b), like the provision of law they implement, retroactively effective on June 1, 1989; and the amendments to the remaining regulations, like the provisions of law they implement, retroactively effective on November 18, 1988. These regulations are intended to achieve a benefit for individuals. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of the provision of law, and might result in the denial of a benefit to someone who is entitled to it.

The Catalog of Federal Domestic Assistance number for the program affected by these amended regulations is 12.609.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 17, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: June 17, 1992.

Robert M. Alexander,

Lieutenant General, USAF, Deputy Assistant Secretary of Defense (Military Manpower & Personnel Policy).

Approved: August 24, 1992.

J.W. Lockwood,

Rear Admiral, U.S. Coast Guard, Chief, Office of Readiness and Reserve.

For the reasons set out in the preamble, 38 CFR part 21, subpart L is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart L—Educational Assistance for Members of the Selected Reserve

1. The authority citation for part 21, subpart L continues to read as follows:

Authority: 10 U.S.C. Ch. 106; 38 U.S.C. 501(a).

2. In § 21.7520 paragraph (b)(14) and its authority citations are revised and paragraph (b)(29) is added to read as follows:

§ 21.7520 Definitions.

* * * * *

(b) * * *

(14) *Mitigating circumstances.*

(i) Mitigating circumstances are circumstances beyond the reservist's control which prevent him or her from continuously pursuing a program of education. The following circumstances

are representative of those which VA considers to be mitigating. This list is not all-inclusive.

(A) An illness of the reservist;

(B) An illness or death in the reservist's family;

(C) An unavoidable change in the reservist's conditions of employment;

(D) An unavoidable geographical transfer resulting from the reservist's employment;

(E) Immediate family or financial obligations beyond the control of the reservist which require him or her to suspend pursuit of the program of education to obtain employment;

(F) Discontinuance of the course by the educational institution;

(G) Unanticipated active duty military service, including active duty for training; and

(H) Unanticipated difficulties in providing for child care for the reservist's child or children.

(ii) If a reservist withdraws from a course during a drop-add period, VA will consider the circumstances which caused the withdrawal to be mitigating.

(iii) In the first instance of a withdrawal after May 31, 1989, from a course or course for which the reservist received educational assistance under chapter 106, title 10, U.S. Code, VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent. In determining whether a withdrawal is the first instance of withdrawal, VA will not consider courses dropped during an educational institution's drop-add period as provided in paragraph (b)(14)(ii) of this section.

(Authority: 38 U.S.C. 3034, 3680(a)(1); Pub. L. 100–689) (Jun. 1, 1989)

* * * * *

(29) *Disabling effects of chronic alcoholism.*

(i) The term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case,—

(A) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(B) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(ii) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(iii) Injury sustained by a reservist as a proximate and immediate result of activity undertaken by the reservist while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 3031(d); Pub. L. 100–689) (Nov. 18, 1988)

3. In § 21.7540, paragraph (a)(2) is revised and the authority citation for paragraph (a) is revised to read as follows:

§ 21.7540 Eligibility for educational assistance.

(a) * * *

(2) Completes the requirements of a secondary school diploma (or an equivalency certificate). This must be accomplished either—

(i) Before completing the initial active duty for training; or

(ii) In the case of a reservist who establishes eligibility either through reenlistment or an extension of an enlistment, at any time before that reenlistment or extension of an enlistment;

* * * * *

(Authority: 38 U.S.C. 3033(c), 10 U.S.C. 2132; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689) (Nov. 18, 1988)

* * * * *

4. In § 21.7550, the introductory text in paragraph (a) and the authority citation for paragraph (a) are revised and a new paragraph (c) and authority citation are added to read as follows:

§ 21.7550 Ending dates of eligibility.

(a) *Time limit of eligibility.* Except as provided in § 21.7551 and paragraphs (b) and (c) of this section, a reservist's period of eligibility expires effective the earlier of the following dates:

* * * * *

(Authority: 10 U.S.C. 2133; Pub. L. 100–689)

* * * * *

(c) *Discharge for disability.* In the case of a reservist separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct and which was incurred on or after the date on which the reservist became entitled to educational assistance, the reservist's period of eligibility expires effective the last day of the 10-year period beginning on the date the reservist becomes eligible for educational assistance.

(Authority: 10 U.S.C. 2133(b); Pub. L. 100–689) (Nov. 18, 1988)

5. In § 21.7551, paragraph (a)(2) and its authority citation are revised to read as follows:

§ 21.7551 Extended period of eligibility.

(a) * * *

(2) The individual was prevented from initiating or completing the chosen program of education within the otherwise applicable eligibility period, because of a physical or mental disability, which is not the result of the reservist's own willful misconduct, and which was incurred in or aggravated by service in the Selected Reserve. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. (See § 21.7520(b)(29)). Evidence must establish that such a program of education was medically infeasible. VA will not grant a reservist an extension for a period of disability which was 30 days or less unless the evidence establishes that the reservist was prevented from enrolling or reenrolling in the chosen program, or was forced to discontinue attendance, because of the short disability.

(Authority: 10 U.S.C. 2133(b)(2), 38 U.S.C. 105, 3031(d); Pub. L. 98–525, Pub. L. 100–689) (Nov. 18, 1988)

* * * * *

6. In § 21.7635, paragraphs (c) and (d) and their authority citations are revised to read as follows:

§ 21.7635 Discontinuance dates.

* * * * *

(c) *Reduction in the rate of pursuit of the course.* (1) If the reservist reduces training by withdrawing from part of a course with mitigating circumstances, but continues training in part of the course, VA will reduce the reservist's educational assistance at the end of the month or the end of the term in which the withdrawal occurs, whichever is earlier; except, VA will reduce educational assistance effective the first date of the term in which the reduction occurs, if the reduction occurs on that date.

(2) If the reservist reduces training by withdrawing from a part of a course, without mitigating circumstances, while continuing to train in part of the course, VA will reduce the reservist's educational assistance effective the first date of the enrollment in which the reduction occurs.

(3) A reservist, who enrolls in several subjects and reduces his or her rate of pursuit by completing one or more of them while continuing training in the others, may receive an interval payment based on the subjects completed if the requirements of § 21.7640 are met. If those requirements are not met, VA will reduce the reservist's educational assistance effective the date the subject or subjects were completed.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 3680; Pub. L. 98–525, Pub. L. 100–689)

(d) *Nonpunitive grade.* (1) If the reservist receives a nonpunitive grade in a particular course, for any reason other than a withdrawal from it, VA will reduce his or her educational assistance effective the first date of enrollment for the term in which the grade applies when no mitigating circumstances are found.

(2) If the reservist receives a nonpunitive grade for a particular course for any reason other than a withdrawal from it, VA will reduce the reservist's educational assistance effective the last date of attendance when mitigating circumstances are found.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 3680; Pub. L. 98–525, Pub. L. 100–689) (Nov. 18, 1988)

* * * * *

7. In § 21.7636, paragraphs (a)(2) and (a)(3) are revised, and paragraph (a)(4) is added and the authority citation for paragraph (a) is revised; paragraph (b)(1) is removed and paragraphs (b)(2) through (b)(6) are redesignated (b)(1) through (b)(5) to read as follows:

§ 21.7636 Rates of payment.

(a) * * *

(2) $105 per month for each month of three-quarter-time pursuit of a program of education;

(3) $70 per month for each month of half-time pursuit of a program of education; and

(4) $35 per month for each month of less than half-time pursuit of a program of education.

(Authority: 10 U.S.C. 2131(b); Pub. L. 98–525, Pub. L. 100–689) (Nov. 18, 1988)

* * * * *

8. In § 21.7639, paragraph (b) and its authority citation are revised; the word "incarcervists" is removed from the first sentence of the introductory text to paragraph (c) and the word "incarcerated" is added in its place to read as follows:

§ 21.7639 Conditions which result in reduced rates.

* * * * *

(b) *Withdrawals and nonpunitive grades.* (1) Withdrawal from a course or receipt of a nonpunitive grade may reduce the amount of educational assistance paid to a reservist. VA is not authorized to pay benefits to a reservist for a course from which the reservist receives a nonpunitive grade which is not used in computing the requirements for graduation or from which he or she withdraws unless—

(i) There are mitigating circumstances; and

(ii) The reservist submits a description of the circumstances in writing to VA within 1 year from the date VA notifies the reservist that he or she must submit the description of the mitigating circumstances; and

(iii) The reservist submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA.

(2) If VA considers that mitigating circumstances exist because the reservist withdrew during a drop-add period or because the withdrawal constitutes the first withdrawal of no more than six credits after May 31, 1989, the reservist is not subject to the reporting requirement found in paragraph (b)(1)(ii) of this section.

(Authority: 10 U.S.C. 2136, 38 U.S.C. 3680(a)) (Jun. 1, 1989)

9. In § 21.7670, paragraph (a)(2) and (a)(3) are revised, paragraph (a)(4) is added and the authority citation for paragraph (a) is revised; paragraphs (b)(2)(i) and (b)(2)(ii) are revised, paragraph (b)(2)(iii) is added and the authority citation for paragraph (b) is revised; paragraphs (c)(2)(i) and (ii) are revised, paragraph (c)(2)(iii) is added and the authority citation for paragraph (c) is revised to read as follows:

§ 21.7670 Measurement of courses leading to a standard college degree.

(a) * * *

(2) 10 through 13 semester hours or the equivalent are three-quarter-time training;

(3) 7 through 9 semester hours or the equivalent are half-time training; and

(4) 1 through 6 semester hours or the equivalent are less than half-time training.

(Authority: 10 U.S.C. 2131(b), 38 U.S.C. 3688(a); Pub. L. 98–525, Pub. L. 100–689) (Nov. 18, 1988)

(b) * * *

(2) * * *

(i) 10 through 12 semester hours or the equivalent are three-quarter-time training;

(ii) 7 through 9 semester hours or the equivalent are half-time training; and

(iii) 1 through 6 semester hours or the equivalent are less than half-time training.

(Authority: 10 U.S.C. 2131(b), 38 U.S.C. 3688(a); Pub. L. 98–525, Pub. L. 100–689) (Nov. 18, 1988)

(c) * * *

(2) * * *

(i) 9 through 11 semester hours or the equivalent are three-quarter-time training;

(ii) 6 through 8 semester hours or the equivalent are half-time training; and

(iii) 1 through 5 semester hours or the equivalent are less than half-time training.

(Authority: 10 U.S.C. 2131(b), 38 U.S.C. 3688(a); Pub. L. 98–525, Pub. L. 100–689)

[FR Doc. 92–29180 Filed 12–2–92; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN: 2900–AE85

Election of Subsistence Allowance at the Chapter 34 Rate Under the Vocational Rehabilitation Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This change eliminates provisions under which a service-disabled veteran in the vocational rehabilitation program with remaining eligibility and entitlement to educational assistance benefits could elect payment of chapter 31 subsistence allowance at the chapter 34 educational assistance rate. No veterans are currently eligible to receive educational assistance benefits under chapter 34 since the law barred providing those benefits after December 31, 1989. Therefore, no one presently qualifies to make the election to receive benefits at chapter 34 rates. The effect of this change is to update VA regulations by removing all provisions for election of subsistence allowance at the chapter 34 rate or payment at that rate.

EFFECTIVE DATE: These final rules are retroactively effective as of January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Charles Graffam, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, 202–233–6495.

SUPPLEMENTARY INFORMATION: On pages 60078 through 60080 of the **Federal Register** of November 27, 1991, the Department of Veterans Affairs (VA) published proposed regulations which eliminated election of chapter 31 subsistence allowance at chapter 34 educational assistance rates. Effective December 31, 1989, VA could not afford further benefits to any eligible veteran under the chapter 34 program. As a result, no one presently has any remaining eligibility for entitlement to these benefits upon which to base an election to receive chapter 31 benefits at

chapter 34 rates. Therefore, all references to this option are deleted from the regulations. Interested persons were given 30 days in which to submit their comments, suggestions or objections to the proposed regulatory amendments. Since VA received no comments, suggestions, or objections, these rules are adopted as final.

These final rules are retroactively effective as of January 1, 1990. These are interpretive rules which implement statutory provisions. Moreover, VA finds that good cause exists for making these rules retroactively effective on the date when veterans became ineligible for payment of chapter 31 subsistence allowance at chapter 34 rates. A delayed effective date would be contrary to statutory design and would complicate implementation of these provisions of law.

VA has determined that these proposed amendments do not contain a major rule as that term is defined in Executive Order 12291, Federal Regulation. These amendments will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Secretary certifies that these amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA) 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the amendments only affect the rights of individual beneficiaries. No new regulatory burdens are imposed on small entities by these amendments.

(The Catalog of Federal Domestic Assistance number is 64.116.)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 9, 1992.

Anthony J. Principi,

Acting Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 21 is amended to read as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

1. The authority citation for part 21, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a).

1A. Section 21.21 is amended by revising paragraph (a) and its authority citation to read as follows:

§ 21.21 Election of benefits under education programs administered by the Department of Veterans Affairs.

(a) *Election of benefits required.* A veteran must make an election of benefits among the programs of education administered by VA for which he or she may be eligible. A veteran who has basic entitlement to rehabilitation under chapter 31 and is also eligible for assistance under any of the other education programs administered by VA must make an election of benefits between chapter 31 and any other VA program of education for which he or she may be eligible. The veteran may reelect at any time if he or she is otherwise eligible. (See §§ 21.264 and 21.334.)

(Authority: 38 U.S.C. 1781(b))

* * * * *

§ 21.22 [Amended]

2. Section 21.22, paragraph (a) is amended by removing the words "or Chapter 34" wherever they appear.

§ 21.78 [Amended]

3. In § 21.78, the first sentence of the introductory text to paragraph (b)(4) is amended by removing the words "or Chapter 34" wherever they appear; in paragraph (b)(4)(i) remove the words "under § 21.4235, or" and add "under § 21.4235 before December 31, 1989, or"; in paragraph (b)(4)(ii) remove the words "or 45 month limitation on Chapter 34 entitlement".

4. Section 21.134 and its authority citation are revised to read as follows:

§ 21.134 Limitation on flight training.

Flight Training approved under chapter 31 may only be authorized in degree curriculums in the field of aviation that include required flight training. This type of training is otherwise subject to the same limitations as are applicable to flight training under Chapter 30.

(Authority: 38 U.S.C. 1504(c), 1515(b))

§ 21.148 [Amended]

5. Section 21.148, paragraph (d) is amended by removing the words "or Chapter 34" wherever they appear.

§ 21.254 [Amended]

6. Section 21.254, paragraph (b)(1) is amended by removing the words "or Chapter 34" wherever they appear.

7. Section 21.256, paragraph (e)(2) and its authority citation are revised to read as follows:

§ 21.256 Incentives for employers.

* * * * *

(e) *Benefits and services.* * * *

(2) Notwithstanding any other provisions of these regulations, if the program in which the veteran is participating meets the criteria for approval of on-job training under chapter 30, the veteran may be paid at educational assistance rates provided for this type of training under chapter 30 to the extent that he or she has remaining eligibility and entitlement under chapter 30 and has elected to receive a subsistence allowance in accordance with § 21.7136.

(Authority: 38 U.S.C. 1508(f), 1516(b), 1662(e))

* * * * *

§ 21.264 [Amended]

8. Section 21.264 is amended by removing the words "or Chapter 34" and the words "and Chapter 34" wherever they appear.

§ 21.268 [Amended]

9. Section 21.268, paragraph (b) is amended by removing the words "or Chapter 34" wherever they appear.

§ 21.272 [Amended]

10. Section 21.272, paragraph (b)(1) is amended by removing the words "or Chapter 34" wherever they appear.

§ 21.276 [Amended]

11. Section 21.276, paragraph (g) is amended by removing the words "or Chapter 34" wherever they appear.

§ 21.320 [Amended]

12. Section 21.320, paragraph (b)(3) and (d)(3) are amended by removing the words "or Chapter 34" wherever they appear.

§ 21.330 [Amended]

13. Section 21.330, paragraph (a) is amended by removing the second sentence.

§ 21.334 [Amended]

14. Section 21.334 is amended by removing the words "or Chapter 34" and the words "and Chapter 34" wherever they appear.

15. Section 21.334 is amended by revising paragraphs (a) and its authority citation, (b)(1), and (e)(2) and its authority citation to read as follows:

§ 21.334 Election of payments at the chapter 30 rate.

(a) *Election.* When the veteran elects payment of an allowance at the chapter 30 rate, the effective dates for commencement, reduction and termination of the allowance shall be in

accordance with §§ 21.7130 through 21.7135 and § 21.7050 under chapter 30.

(Authority: 38 U.S.C. 1808(f), 1780).

(b) *Election of payment at the chapter 30 rate subsequent to induction into a rehabilitation program.* * * *

(1) The commencing date determined under § 21.7131 in the case of a veteran who has elected payment at the chapter 30 rate; or

* * * * *

(e) *Effect of chapter 34 program termination.* * * *

(2) A veteran entitled to chapter 30 benefits based on his or her chapter 34 eligibility as of December 31, 1989, and whose election of chapter 34 rates terminated as of the date under paragraph (e)(1) of this section must, if the individual desires payment at the chapter 30 rate, elect such payment.

(Authority: 38 U.S.C. 1411(a))

16. Section 21.340, paragraph (c) and its authority citation are revised to read as follows:

§ 21.340 Introduction.

* * * * *

(c) *Election of benefits at the chapter 30 rate.* If a veteran elects to receive a subsistence allowance paid at the chapter 30 rate, the effect of absences is determined under §§ 21.7139 and 21.7154.

(Authority: 38 U.S.C. 1508(f) and 1510)

[FR Doc. 92–29184 Filed 12–2–92; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 414

[BPD–742–F]

RIN 0938–AF19

Medicare Program; Continuous Use of Durable Medical Equipment

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

ACTION: Final rule.

SUMMARY: This final rule responds to public comments on the October 9, 1991 interim final rule with comment period that set forth the Secretary's determination, required under section 1834(a)(7)(A) of the Social Security Act, of the meaning of the term "continuous" as that term is used in defining a period of continuous use for which we make payments for durable medical equipment.

EFFECTIVE DATE: This final rule is effective January 4, 1993.

FOR FURTHER INFORMATION CONTACT: William Long, (410) 966–5655.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4062(b)(1) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) added section 1834 to the Social Security Act (the Act) to provide for a completely restructured Medicare payment methodology for durable medical equipment (DME) and orthotic and prosthetic devices. Section 1834 of the Act, as amended by section 411(g)(1) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360), section 608(d)(22)(A) of the Family Support Act of 1988 (Pub. L. 100–485), and sections 6112 and 6140 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), sets forth special payment rules for DME, prosthetics, and orthotics furnished on or after January 1, 1989. Section 4152 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) amends the payment rules for DME items furnished on or after January 1, 1991.

More specifically, sections 1834 (a)(2) through (a)(5), section 1834(a)(7), and section 1834(h) of the Act set forth six separate classes of DME, orthotics, and prosthetics and describe how the fee schedule for each class is established. The six classes of items are:

- Inexpensive and other routinely purchased DME.
- Items requiring frequent and substantial servicing.
- Customized items.
- Oxygen and oxygen equipment.
- Prosthetic and orthotic devices.
- Other items of DME (capped rental items).

Under section 1834(a)(7)(A)(i) of the Act, payment is made on a monthly basis for the rental of items of DME (capped rental items) that are not paid for under the other four classes of items set forth in sections 1834(a) (2) through (5) of the Act. For DME items furnished on or after January 1, 1989, payment for a capped rental item may not exceed a period of continuous use of longer than 15 months. If a beneficiary's continuous use of an item of DME exceeds 15 months, we pay a capped rental payment only for the first 15 months. After the 15-month period, the supplier retains ownership of the item and must continue to provide the item without any charge to the beneficiary until medical necessity ends or Medicare coverage ceases.

For capped rental DME items furnished on or after January 1, 1991, section 1834(a)(7)(A)(i) of the Act, as amended by section 4152(c)(2) of Public Law 101–508, requires that in the 10th continuous month during which payment is made for a capped rental item, a supplier must give individual beneficiaries the option to enter into a purchase agreement. If a beneficiary accepts this purchase option, the period of continuous use for which capped rental payments can be made under section 1834(a)(7)(A)(i) of the Act is limited to 13 months.

Section 1834(a)(7)(A) of the Act requires that the Secretary determine the meaning of the term "continuous" as that term is used in defining a period of continuous use for which we make payments for capped rental DME items. Recently, the United States District Court for the District of Puerto Rico, in *Medics, Inc.* v. *Sullivan*, 766 F. Supp. 47 (D.P.R. 1991), ordered us to define the word "continuous" as used in section 1834(a)(7) of the Act through notice and comment rulemaking. In order to comply with the court order, we published on October 9, 1991 an interim final rule with comment period that added a new § 414.230 to set forth our determination of what constitutes a period of continuous use for purposes of delineating the period for which we make payment for capped rental items under section 1834(a)(7) of the Act. This Final rule responds to public comments received on the October 9, 1991 interim final rule (56 FR 50821).

II. Provisions of the Interim Final Rule

In the October 9, 1991 interim final rule, we defined "continuous use" as a period that begins with the first month of medical need and continues until the patient's medical need for a particular item of equipment ceased. That period could be interrupted for reasons other than a termination of medical need, such as a hospitalization. During an interruption, the capped rental period will not be terminated but temporarily suspended. For example, if a beneficiary rents an item of equipment for 12 months and is then hospitalized for 60 days and the beneficiary's medical need for the equipment does not cease, upon his or her discharge from the hospital, the beneficiary will be considered to be in the 13th month of rental for purposes of calculating the capped rental period. Moreover, for the two months the beneficiary was hospitalized, no separate payment under Medicare Part B will be made for the item of equipment.

If a period of interruption is extensive, the supplier may wish to retrieve the item of equipment during that period and return the item after the interruption. If, however, the

beneficiary does not use an item for longer than 60 days plus the days remaining in the last paid rental month, a new capped rental period begins upon the beneficiary's resumption of use and the physician's recertification of medical necessity. A recertification must include a new prescription and a statement describing the reason for the interruption and demonstrating that medical necessity ended. If no recertification is submitted by the supplier, a new capped rental period will not begin.

The period of continuous use for capped rental items may also be affected if a beneficiary moves or requires a change in suppliers. Once the initial rental period starts, a move by the beneficiary, either permanent or temporary, or a change of supplier, will not result in a new rental episode or a break in the period of continuous use. If the period had already expired, we will not make any additional payments. However, in the event that the medical needs of the beneficiary change, necessitating an equipment change either through a change to different equipment or the addition of equipment, a new capped rental period begins for the new or additional equipment. A new capped rental period will not begin for base equipment that is modified by an addition.

If the beneficiary's medical necessity is interrupted after the 15-month period, the rules governing continuous medical need, discussed above, will also apply. That is, the beneficiary's period of continuous use after the initial 15-month period also could be interrupted occasionally by various factors (such as hospitalization) without being terminated. However, claims for equipment that are submitted after the 15-month cap has been reached and which purport to be for a new period of medical necessity will be subjected to an intense carrier medical review.

In this final rule, we are adopting the provisions as set forth in the October 9, 1991 interim final rule.

III. Response to Public Comments

In response to the interim final rule, we received three timely items of correspondence. We have summarized the comments and are presenting them below along with our responses.

A. Continuous Use

Comment: One commenter stated that the regulations should be clarified to specify that a period of continuous use is in effect for the duration of the particular diagnosis that indicates the beneficiary's medical need for a particular piece of DME. Thus, if a beneficiary is diagnosed with a new medical condition, a new coverage period should begin even though the condition requires use of the same equipment.

Response: Section 1834(a)(7)(A)(i) of the Act specifies that payment shall be made "during the period of medical need." The Act does not refer to the duration of the beneficiary's diagnosis; therefore, we do not believe this provision was intended to allow a new 15-month rental period to begin each time a particular diagnosis changes.

B. Temporary Interruption

Comment: Two commenters objected to the provision that permits a temporary interruption in the period of continuous use. One commenter stated that any interruption in the period of medical need should constitute a break in continuous use, rather than our policy that passage of a 60-day period constitutes a break in continuous use. The other commenter suggested that the terms "continuous use" and "temporarily suspended" are incompatible and should not be linked.

Response: Section 412.230(c) specifies that a period of continuous use allows for a temporary interruption in the use of equipment. We anticipate that there will be breaks in medical necessity of 60 days or less for various reasons that would not warrant a cessation in the period of continuous use and the beginning of a new rental period. For example, a beneficiary who has rented a wheelchair for 14 months is hospitalized in a cardiac care unit for a week. During the hospital stay, the beneficiary does not have a medical need for a wheelchair since he is confined to bed. If this comment were adopted, the period of continuous use would end, and a new 15-month rental period would begin when the beneficiary is discharged from the hospital. Our October 9, 1991 interim final rule (54 FR 50822) makes clear that during an interruption the capped rental period is not terminated but "temporarily suspended" pending resumption of medical need. We believe the purpose of section 1834(a)(7)(A)(i) of the Act is to limit payment to a period of continuous use including temporary interruptions. We find no evidence that Congress intended that suppliers be paid for an additional 15-month period every time there is a temporary break in medical necessity.

Comment: One commenter stated that the 60-day period of temporary interruption is unreasonable in that it imposes upon the supplier an obligation to continue to supply the equipment without any compensation.

Response: Although we believe it will be very infrequent that equipment remains in a beneficiary's home for a full 60-day period during a temporary interruption, suppliers are permitted to retrieve the equipment during temporary interruptions and rent it to other patients. In most cases, a beneficiary is hospitalized for less than 30 days and the supplier is paid the full month's rent. Thus, it will be infrequent that the supplier goes uncompensated for any period of time.

C. New Equipment

Comment: A commenter suggested that the regulations be clarified to indicate that a new period of continuous use should begin for equipment that is added to a base piece of equipment.

Response: We have clarified § 414.230(f) accordingly. If the beneficiary's medical needs were to change, necessitating the addition of equipment, a new capped rental period would begin for the additional equipment. However, a new capped rental period will not begin for the base equipment.

D. General

Comment: A commenter requested that HCFA allow suppliers access to its common working file, so that they may obtain coverage history to determine if beneficiaries have previously rented equipment. If the supplier provides equipment on an assigned basis without securing a waiver of liability, it has no effective recourse if it discovers that the beneficiary has provided incorrect information about prior coverage. The commenter also suggested that suppliers be given waiver of liability protection when they are unaware that a beneficiary has previously rented equipment.

Response: The option to furnish equipment rests with the supplier. Since the supplier is able to communicate with the beneficiary prior to furnishing medical equipment, we believe that the supplier should be responsible for determining whether a beneficiary has ever rented equipment. HCFA is responsible for ensuring both that it does not pay for equipment after the appropriate rental period and that it does not pay for services furnished to a patient who is not entitled to Medicare benefits. Granting suppliers a waiver of liability would undermine both of these principles.

Comment: A commenter suggested that Medicare pay for items of equipment that are lost or stolen during a temporary suspension of the rental period.

Response: Medicare does not insure suppliers against loss or theft. Lost or stolen items should be covered by the supplier's business insurance.

Comment: One commenter stated that this rule should not apply to unassigned claims.

Response: Section 1834(a) of the Act applies to all claims, both assigned and unassigned. Otherwise, it would be relatively easy for suppliers to circumvent the 15-month rental provision by refusing to accept assignment for the 15th rental month. If this commenter's suggestion were adopted, the supplier could then charge for indefinite rentals on an unassigned basis. That is, there would be no limitation on the number of rental months, and we would continue to be billed on a monthly rental basis as long as medical need continued.

Comment: A commenter recommended that we change Medicare policy to expand coverage for the purchase of capped rental items of durable medical equipment because it would save money for beneficiaries and the Medicare trust fund.

Response: The Act does not permit payment for the purchase of capped rental items of DME, except as provided for by section 1834(a)(7)(A). Section 1834(a)(7)(A) provides only for the option to purchase power driven wheelchairs during the first rental month and for the option to purchase other capped rental equipment during the 10th rental month. Therefore, we have no discretion with regard to this suggestion.

IV. Confirmation of Interim Final Regulations

We are confirming as final regulations, with amendments to § 414.230(f) as discussed above, the interim final regulations published October 9, 1991 (56 FR 50821).

V. Regulatory Impact Statement

A. Executive Order 12291

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

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The impact of this final rule on the Medicare program and on DME distributors and manufacturers is expected to be less than $100 million per year over the next five fiscal years. For this reason, we have determined that a regulatory impact analysis meeting the requirements of E.O. 12291 is not required. Therefore, we have not prepared one.

B. Regulatory Flexibility Analysis

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities.

In 1989, total Medicare expenditures for capped rental items of DME equalled approximately $350 million. We expect that the policy on continuous use of DME that we are confirming in this final rule will affect only a small portion of the transactions involving capped rental DME. Although it is possible that some highly specialized DME manufacturers or suppliers may experience significant effects as a result of this policy, we cannot determine whether the effects will be detrimental or beneficial because we lack data on individual company sales or on practice patterns with respect to equipment rentals. Overall, however, the impact of this final rule on the $3.9 billion DME industry will be insignificant. Thus we have determined, and the Secretary certifies, that this final rule will not meet the criteria of the RFA for requiring a regulatory flexibility analysis. Therefore, we have not prepared one.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. Since we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals, we have not prepared a rural hospital impact statement.

VI. Paperwork Reduction Act

As noted in the October 9, 1991 interim final rule (56 FR 50821), §§ 414.230 (d) and (f) contain information collection requirements subject to review by the Executive Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511). We have submitted a copy of the interim final rule to OMB for its review of these information collection requirements.

List of Subjects in 42 CFR Part 414

End-stage renal disease (ESRD), Durable medical equipment (DME), Health professions, Laboratories, Medicare.

The interim rule amending 42 CFR Part 414 that was published on October 9, 1991 (56 FR 50823), is adopted as final with the following change:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1833(a), 1834(a), 1861(n), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395l(a), 1395m(a), 1395x(n), 1395hh, and 1395rr).

Subpart D—Payment for Durable Medical Equipment and Prosthetic and Orthotic Devices

2. In subpart D, § 414.230, paragraph (f) is revised to read as follows:

§ 414.230 Determining a period of continuous use.

* * * * *

(f) *New equipment.* If a beneficiary changes equipment or requires additional equipment based on a physician's prescription, and the new or additional equipment is found to be necessary, a new period of continuous use begins for the new or additional equipment. A new period of continuous use does not begin for base equipment that is modified by an addition.

* * * * *

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

Dated: August 17, 1992.

William Toby,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: October 13, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–29178 Filed 12–2–92, 8:45 am]

BILLING CODE 4120–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1180

[Ex Parte No. 282 (Sub-No. 12)]

Transfer or Operation of Lines of Railroads in Reorganization

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission amends the procedures to be followed in allowing transfers or operations of lines of bankrupt rail carriers under bankruptcy reorganization. The existing procedures are obsolete. The revised procedures indicate how the limited class of applications involving transfer and operation of lines of bankrupt carriers under plans of reorganization will be handled in the future and provide for modification of procedures and deadlines to comply with court-imposed time constraints.

EFFECTIVE DATE: The rules are effective January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph Levin, (202) 927–6287 or Richard Felder (202) 927–5610 [TDD for hearing impaired, (202) 927–5721].

SUPPLEMENTARY INFORMATION: The existing rules in 49 CFR Part 1180, subpart B, provide procedures to be used to allow transfers or operations of lines of bankrupt rail carriers under sections 5(b) and 17(b) of the Milwaukee Railroad Restructuring Act (45 U.S.C. 904 and 915) by railroads in reorganization under former section 77 of the Bankruptcy Act. When these became obsolete, the Commission proposed to change them by notice of proposed rulemaking published on September 25, 1991, at 56 FR 48510.

After comments were received, the Commission modified the proposed rules by notice published on July 17, 1992, at 57 FR 31693. The Commission now adopts the modified proposed rules as final rules. The final rules indicate how the limited class of applications involving transfer and operation of lines of bankrupt carriers involving a plan of reorganization under 11 U.S.C. 1172 will be handled in the future. They provide for modification of procedures and deadlines to comply with court-imposed time constraints. The full text of the final rules are set forth below.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Environmental and Energy Considerations

The Commission concludes that this section will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Act Certification

Under 5 U.S.C. 605(b), the Commission concludes that its action in adopting the final rules will not have a significant impact on a substantial number of small entities. The Commission preliminarily concluded in both prior notices, as more fully explained in the underlying decisions, that the proposed regulations would not have a significant economic impact on a substantial number of small entities, since the general purpose of the proposals was only to allow more flexible procedures for the transfer or operations of the involved rail lines. None of the comments filed argued that the proposal would have a significant impact on small entities. The final rules merely subject the limited class of applications involving transfer and operation of lines of bankrupt carriers under plans of reorganization to the procedures which would be applicable if no bankruptcy reorganization were involved.

List of Subjects in 49 CFR Part 1180

Railroads.

Decided: November 23, 1992.

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

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1180 of the Code of Federal Regulations is amended as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for part 1180 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, 11341, 11343–11346; 5 U.S.C. 553 and 559; and 11 U.S.C. 1172.

2. Subpart B of part 1180 is revised to read as follows:

Subpart B—Transfer or Operation of Lines of Railroads in Reorganization

§ 1180.20 Procedures.

(a) Transactions under 11 U.S.C. 1172, for the transfer or operation of lines of bankrupt railroads under a plan of reorganization are governed by the following procedures:

(1) If the buyer or operator is not a carrier, the Notice of Exemption procedures in subpart D of part 1150 of this title.

(2) If the buyer or operator is a carrier, either:

(i) The application procedures in subpart A of this part; or,

(ii) The procedures in part 1121 of this title for a petition to exempt the transaction from prior approval requirements of 49 U.S.C. 11343, et seq.

(b) The Commission will establish or modify its existing procedures and deadlines as necessary in each proceeding to comply with appropriate orders of the Bankruptcy Court.

(c) Under 11 U.S.C. 1172(c)(1), the Commission is required to provide affected employees with adequate protection. The Commission will impose the minimum levels required by 49 U.S.C. 11347, unless a need is shown for different levels of protection.

(d) All applications, notices, and petitions for exemption within the scope of § 1180.20(a) shall advise the Commission that the proposed transaction involves the transfer or operation of lines in reorganization.

[FR Doc. 92–29338 Filed 12–2–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 921105–2305]

King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS is issuing an interim final rule that supersedes State of Alaska (State) pot limit regulations in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands Area (BSAI). This action is necessary because NMFS has determined that the pot limit regulations adopted by the State for the king and Tanner crab fisheries of the BSAI are inconsistent

with provisions of the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the BSAI (FMP). The intended effect of this action is to further the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to the FMP by superseding State pot limit regulations in the EEZ that are inconsistent with the FMP.

DATES: Effective November 30, 1992. Comments on the interim final rule must be received by NMFS at the following address on or before January 4, 1993.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, (Attn. Lori Gravel), Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, or delivered to the Federal Building Annex, Suite 6, 9109 Mendenhall Mall Road, Juneau, Alaska. Individual copies of the environmental assessment (EA) and Federalism Assessment may also be obtained from this address. Comments on the EA are requested.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin, Fishery Management Biologist, Alaska Region, NMFS, at 907–586–7228.

SUPPLEMENTARY INFORMATION:

Description of the FMP

The commercial king and Tanner crab fisheries in the EEZ of the BSAI are managed under the FMP. The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act). It is a framework FMP that, with Council and Secretarial oversight, delegates management of the crab resources in the BSAI to the State. It was approved by the Secretary of Commerce (Secretary) and became effective on June 2, 1989.

Section 9 of the FMP provides the interested public with a procedure for appeal to the Secretary of any State preseason fisheries actions alleged to be inconsistent with the FMP, Magnuson Act, or any other applicable Federal laws. First, an interested person who objects to a State crab regulation must petition the Alaska Board of Fisheries (Board) under the State Administrative Procedure Act for the repeal of a State crab regulation and/or the adoption of a consistent regulation. If, and only if, a person obtains an adverse ruling from the Board, the person may appeal the regulation to the Secretary. The Crab Interim Action Committee (CIAC) will review the regulation prior to the Secretary deciding on the appeal.

The CIAC was established by the Council pursuant to section 2 of the FMP to provide oversight and Council review of State regulatory actions that are promulgated by the Board. The CIAC has no authority to grant or reject an appeal. A function of the CIAC is to comment in writing on preseason appeals to assist the Secretary with the review of State crab regulations to determine if they are consistent with the FMP, the Magnuson Act, and other Federal laws.

Under section 9.3 of the FMP, if the Secretary makes a preliminary determination that the State regulations are inconsistent with the FMP, the Magnuson Act, or any other applicable Federal laws, then the Secretary will publish a proposed rule that is consistent, together with the reasons for the rule, and request comments for 30 days. The Secretary must also provide actual notice of the proposed rule to the Council and the Commissioner of the Alaska Department of Fish and Game (ADF&G). The FMP allows the State 20 days to request an informal hearing. The Secretary may withdraw the proposed rule if the Secretary ultimately decides that the State regulations in question are consistent. If the Secretary determines that the regulations are inconsistent, the Secretary may publish a final rule that would supersede the State regulations in the EEZ.

The FMP allows for an expedited review when necessary to make a Federal rule effective in a timely fashion. The Secretary must notify the Council and the Commissioner of ADF&G of the use of an expedited review. In an expedited review, the Secretary will provide for comment by the Council (or a committee of the Council) and the Commissioner of ADF&G, if at all possible. However, if necessary, the Secretary can immediately publish in the **Federal Register** an interim final rule that supersedes any State regulation in the EEZ that the Secretary finds is inconsistent. The Secretary will then request comments on the interim final rule before issuing a final rule. The authority of the Secretary in these matters has been delegated to the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) and the Director, Alaska Region, NMFS.

Among the management measures authorized by the FMP are pot limits. Section 8.2.7 of the FMP lists seven factors that the State can consider when establishing pot limits. Under the FMP, only special types of situations warrant the use of pot limits. It describes two such situations, although others may exist. The first is to prevent wastage as a result of pots lost to advancing ice cover. The second is to control the harvest in a fishery when only a small guideline harvest limit (GHL) is available. Section 8.2.7 also states that "[p]ot limits must be designed in a nondiscriminatory manner. For example, pot limits that are a function of vessel size can be developed which affect large and small vessels equally."

State Pot Limit Regulations

During March 3–5, 1992, the Board met to consider gear limitations for king and Tanner crab in response to a request submitted by a portion of the crab industry and data presented by the ADF&G staff indicating that levels of gear deployed in these fisheries were creating conservation and management difficulties. Prior to its deliberations, the Board considered reports and presentations by staff from ADF&G, NMFS, University of Alaska, and the State Attorney General's Office on the fisheries, pot gear usage and loss, impacts of alternative pot limits, State/Federal responsibilities frameworked in the FMP, and an overview of the FMP criteria and the Magnuson Act. The Board also received public testimony from 30 individuals and a working group that was composed of 10 fishermen and processors.

The Board found the following facts, identified in staff reports and through public testimony, to be specific issues of concern:

(1) Bristol Bay red king crab fishery and Tanner crab fishery—Recent increases in vessels and gear in Bristol Bay have led to derby-style king crab fishing with short seasons (7 days in 1991) that are difficult to manage. The ADF&G staff indicated that a season length of at least 2 weeks was required to properly manage the fishery in-season. The Board noted a similar situation in the Tanner crab fishery.

(2) Norton Sound red king crab, Pribilof Islands red and blue king crab, and St. Matthew blue king crab fisheries—The potential level of effort is so high in relation to GHL, that the ability to manage these fisheries and prevent overfishing has been lost.

(3) Snow crab fishery—Fast moving ice conditions have caused excessive pot loss, which has resulted in increased crab mortality and habitat degradation. The State has been unsuccessful in enforcing its biodegradable escape panel regulation, which was intended to reduce mortality associated with lost pots.

The Board considered various management options including: (1) closing fisheries; (2) changing dates of fisheries; (3) trip limits; (4) exclusive or super-exclusive registration areas; (5) requiring pre-registration and dividing up the GHL in some manner: and (6) pot

limits. The Board considered two types of pot limits. The first type was a single uniform limit on all participating vessels regardless of the size of the vessel and its harvesting capacity. The second type was limits on individual vessels or classes of vessels in proportion to vessel length. The Board determined that uniform pot limits was its preferred management alternative.

The Board established the following uniform pot limits that became effective under State law on June 19, 1992:

5 AAC 34.825. LAWFUL GEAR

(e) During a commercial king crab season in Statistical Area T (Bristol Bay), an aggregate of no more than 250 king crab pots may be operated from a vessel registered to fish king crab.

(f) Instead of the requirements of 5 AAC 34.050(e)(3), in Statistical Area T replacement of lost identification tags is permitted if the vessel operator and three crew members, in person, submit to the ADF&G office in Dutch Harbor a sworn statement or affidavit describing how the tags were lost and listing the numbers of the lost tags.

5 AAC 34.925. LAWFUL GEAR

(i) During a commercial king crab season in Statistical Area Q (Bering Sea), an aggregate of no more than 100 king crab pots may be operated from a vessel registered to take king crab.

(j) Instead of the requirements of 5 AAC 34.050(e)(3), in Statistical Area Q replacement of lost identification tags is permitted if the vessel operator and three crew members, in person, submit to the ADF&G office in Dutch Harbor a sworn statement or affidavit describing how the tags were lost and listing the numbers of the lost tags.

5 AAC 35.525. LAWFUL GEAR

(j) During a commercial tanner crab season in the Bering Sea District, an aggregate of no more than 250 tanner crab pots may be operated from a vessel registered to fish tanner crab.

(4) The department may replace tags lost during the season if the vessel operator submits a sworn statement or affidavit describing how the tags were lost and listing the numbers of tags; however, for the Bering Sea District only, the vessel operator and three crew members shall, in person, submit to the ADF&G office in Dutch Harbor a sworn statement or affidavit describing how the tags were lost and listing the numbers of the lost tags.

Appeal of the Board's Preferred Management Alternative

On May 5, 1992, the Coalition of Bering Sea Crab Fishermen (Coalition) petitioned the Board for reconsideration of the pot limit regulations. In a letter dated June 17, 1992, the Board said that it considered the petition but did not find an emergency per the "Joint Board Petition Policy" (5 AAC 96.625), and thus denied the petition without reviewing its merits.

On June 30, 1992, the Coalition appealed the Board's decision to adopt regulations limiting the number of pots that may be carried aboard vessels in certain BSAI king and Tanner crab fisheries to NMFS. The Coalition challenged the State pot limit regulations on the grounds that they are inconsistent with the FMP, the Magnuson Act, and other applicable Federal laws. The Coalition alleged that uniform pot limits: (1) Violate section 8.2.7 of the FMP because they discriminate against large vessels in favor of small to medium vessels; (2) fail to meet national standard 5 of the Magnuson Act because their principal effect is to redistribute effort away from larger vessels to smaller vessels without a clear gain in terms of reduced amount of gear or longer seasons; (3) fail to meet national standard 7 of the Magnuson Act because uniform pot limits are unenforceable and thus do not minimize costs; and (4) are inconsistent with other applicable Federal laws, namely, E.O. 12291, the Regulatory Flexibility Act, and the equal protection guarantees of the U.S. Constitution because, in part, the potential benefits of uniform pot limits do not outweigh the potential costs, most of the regulatory burden is imposed on one class of vessels, and only the efficiency of larger vessels is reduced. The Coalition requested that NMFS immediately supersede the State pot limit regulations in an expedited manner.

The CIAC met on August 26, 1992, to review the appeal presented by the Coalition. During its meeting, the CIAC reviewed the purposes and function of the FMP. The CIAC received a briefing on the appeals process from NOAA General Counsel, a summary of the Board action and findings presented by ADF&G staff, a synopsis of the content of the appeal by NOAA General Counsel, and a history and description of the FMP by Council and NMFS staff. The CIAC received public testimony from seven individuals, including the applicant Coalition. The State also commented on the appeal.

At the meeting, the CIAC spent some time examining the need for pot limits. In this regard, some members felt that one of the problems in evaluating the adequacy of the Board's uniform pot limits is the vastly different circumstances of the individual crab fisheries. Whereas the Bristol Bay red king crab fishery has a GHL of 10.3 million pounds (4,672 metric tons (mt)), the Tanner and snow crab fisheries, with GHLs of 39.2 million (17,781 mt) and 207 million pounds (93,894.5 mt) for the 1992/1993 fishing season, offer greatly different conservation concerns. The CIAC was unable to reach consensus on its written comments to the Secretary to assist her in making determinations about the pot limits. CIAC members agreed to submit their individual comments in writing. Their submissions and the entire report are included in Appendix 1 of the EA prepared for this action.

Section 8.2.7 of the FMP provides that "[p]ot limits must be designed in a non-discriminatory manner. For example, not limits that are a function of vessel size can be developed which affect large and small vessels equally." NMFS concludes that this provision prohibits pot limits that adversely affect or burden only large vessels and that the FMP requires the economic burden imposed by pot limits to be shared equally by large and small vessels alike.

NMFS has reviewed an economic analysis by J. Greenberg, M. Herrmann, and P. Hooker that was presented to the Board (attached to EA). That analysis concluded that the uniform pot limits adopted by the Board cause an adverse economic impact only upon the larger crab vessels that have the capacity to carry more pots than those allowed by the uniform pot limits. The analysis demonstrated that medium and small vessels experience little or no adverse economic impact as a result of the pot limits. These conclusions are not in dispute.

NMFS has reviewed the report from the CIAC, the concerns raised by each member, the findings of the Board, and other background information. NMFS has determined that the uniform pot limits of 250 and 100 pots, which the State imposed on all vessels regardless of their size, are inconsistent with section 8.2.7 of the FMP.

Based on the factors summarized above, NMFS concludes that the challenged pot limit regulations impermissibly discriminate against large vessels in violation of the FMP, and in accordance with section 9.3 of the FMP, publishes this interim final rule to supersede those regulations in the EEZ of the BSAI.

Classification

The Assistant Administrator determined that this rule is necessary for the conservation and management of crab fisheries in the EEZ of the BSAI, and that it is consistent with the

Magnuson Act and other applicable laws.

The Assistant Administrator also finds that the reasons summarized above justifying promulgation of this rule make it contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under sections 553(b) and (d) of the Administrative Procedure Act. Some crab fisheries subject to the State's pot limit regulations have already commenced. This rule must be made effective immediately to remove the economic burden that the State's pot limit regulations have imposed on large vessels and to allow sufficient time for vessel operators to plan for upcoming crab fishery openings. The public has had an opportunity to comment on the State pot limit regulations, and their consistency with the FMP, Magnuson Act, and other applicable law at the Board meeting in March 1992 and at the CIAC meeting in August 1992. At each meeting, public testimony was received. Additional comment on this interim final rule will be accepted for a period of 30 days after the effective date.

This interim final rule is exempt from the normal review procedures of E.O. 12291. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the regular procedures of that Order for the reason set forth in the preamble of this interim final rule.

Because neither the Administrative Procedure Act, nor any other statute, requires public notice and opportunity to comment upon this rule, no regulatory flexibility analysis is required.

NMFS has determined that this interim final rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

The Alaska Region, NMFS, prepared an EA for this action. The Assistant Administrator found that no significant impact on the human environment would result from implementation of this rule. A copy of the EA may be obtained (see **ADDRESSES**).

NMFS has determined that the management measures implemented under this interim final rule would not adversely affect endangered or threatened species. Therefore, further consultation pursuant to section 7 of the Endangered Species Act is not required for the implementation of this rule

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Federalism Implementation Officer of the Department of Commerce has certified that this action is consistent with the federalism principles, criteria, and requirements set forth in Sections 2 through 5 of E.O. 12612. A copy of the Federalism Assessment prepared for this action may be obtained (see **ADDRESSES**).

List of Subjects in 50 CFR Parts 671

Fisheries, Reporting and recordkeeping requirements.

Dated: November 27, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR chapter VI is amended by adding part 671 to read as follows:

PART 671—KING AND TANNER CRAB FISHERIES OF THE BERING SEA AND ALEUTIAN ISLANDS

Subpart A—General Provisions

Sec.

671.1 Purpose and scope.
671.2 Definitions.

Subpart B—Management Measures

671.20 Pot limits.

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

Subpart A—General Provisions

§ 671.1 Purpose and scope.

The purpose of this part is to supersede State of Alaska regulations applicable to the commercial king and Tanner crab fisheries of the Bering Sea and Aleutian Islands in the EEZ that are determined to be inconsistent with the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands, the Magnuson Fishery Conservation and Management Act, or other applicable Federal law

§ 671.2 Definitions.

In addition to the definitions in the Magnuson Fishery Conservation and Magnuson Act and in § 620 2 of title 50, CFR, *Bering Sea and Aleutian Islands Area* means those waters of the exclusive economic zone off the west coast of Alaska lying south of Point Hope (68°21′ N. latitude), and extending south of the Aleutian Islands for 200 nautical miles west of Scotch Cap Light (164°44′36″ W. longitude).

Subpart B—Management Measures

§ 671.20 Pot limits.

State of Alaska pot limits shall not apply to vessels fishing for red king crab (*Paralithodes camtschatica*), blue king crab (*P. platypus*), brown (or golden) king crab (*Lithodes aequispina*), Tanner crab (*Chioneocetes bairdi*), and snow crab (*C. opilio*) in the Bering Sea and Aleutian Islands Area.

[FR Doc. 92–29289 Filed 11–30–92; 10:55 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 233
Thursday, December 3, 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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 156

Proposed Regulation Requiring Registration of Broker Associations

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing rules which would define entities commonly known as "broker associations" and would require that such entities register with their respective contract markets pursuant to contract market rules. The regulations would prohibit a member of a broker association from receiving orders or executing transactions unless the broker association was registered with its respective contract market and each contract market also would be required to prohibit such conduct under its rules. In addition, the Commission would require each contract market to implement procedures necessary to ensure that registration procedures are followed and to integrate the data collected from registration into its affirmative compliance programs.

DATES: Comments must be received on or before January 4, 1993.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission Commodity Futures Trading Commission, 2033 K Street NW., Washington DC 20581.

FOR FURTHER INFORMATION CONTACT: Christopher K. Bowen, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Burden

The public reporting burden for this collection of information is estimated to average 81.86 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the entire 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 Joe F Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and to the Office of Management and Budget, Paperwork Reduction Project (3038–0022), Washington, DC 20503.

I. Introduction

On April 11, 1990, the Commission originally published for public comment in the **Federal Register** proposed part 156 regulations regarding registration of broker association. 55 FR 13545, April 11, 1990. These proposed rules were developed as a follow-up to a Commission-mandated study of broker associations by the Division of Trading and Markets ("Division") and a review of other available information with respect to these associations.

In July 1989, the Commission directed the Division to conduct a study of the organization and trading practices of broker associations as part of its ongoing oversight of trade practice programs.[1] The Division examined existing and proposed exchange rules governing broker associations and interviewed members of broker associations at certain exchanges and representatives of other market participants which use the services of broker associations, such as futures commission merchants ("FCMs"). The Division found that market users ascribed certain advantages to broker associations, including specialized order execution expertise, better capitalization from increased financial resources and uninterrupted customer service.[2]

This study also raised concerns, however, that broker relationships may increase the potential for trading abuses. For example, it was noted that formal or informal arrangements to share profits and losses may create a potential incentive for members of an association to act as accommodating traders for each other. Moreover, it was noted that members of a broker association may use the information gained through access to each others' customer orders to trade ahead of a customer, to prefer a favored customer or to assist each other in indirectly bucketing or taking the opposite side of customer orders. As a result of or taking the opposite side of customer orders. As a result of these findings, the Division recommended that the Commission take steps through rulemaking to require the identification of broker association members and to monitor their trading activity.[3]

In originally proposing the part 156 rules, the Commission also noted that five exchanges had in place a range of self-regulatory programs intended to monitor affiliated broker activity.[4] In the course of their surveillance, the exchanges identified a member of instances of abusive trading activity by association members. The violations for which affiliated members had been sanctioned included disclosure of customer orders, non-competitive trading and accommodation trading.[5] In addition, the violations charged in the indictments arising out of the joint Justice Department-CFTC investigation of the Chicago exchanges included violations committed by affiliated brokers.

Subsequent to the publication of the original rule proposal, Congress enacted the Futures Trading Practices Act of 1992 ("Futures Act") on October 28, 1992, which includes provisions governing the activities of broker associations. Pursuant to section 102 of the Futures Act, section 4j(d)(l) of the Commodity Exchange Act ("Act") as amended, 7 USC 6j, prohibits a floor broker from executing a customer order if that broker knows the opposite party to the transaction is a floor broker or floor trader with whom the floor broker has one of the following relationships: (1) A partner in a partnership, (2) an employer or employee or (3) such other affiliation as the Commission may specify by rule. This provision is scheduled to go into effect 270 days after enactment of the Futures Act.

[1] See Division of Trading and Markets, Study on Broker Associations (January 4, 1990) ("Broker Association Study"). Copies of this report are available to the public.

[2] Broker Association Study at 53–54.

[3] *Id* at 60.

[4] These exchanges are the Chicago Mercantile Exchange ("CME"), Coffee, Sugar & Cocoa Exchange, Inc. ("CSC"), Commodity Exchange, Inc. ("Comex"), New York Futures Exchange ("NYFE") and New York Mercantile Exchange ("NYMEX").

[5] For a discussion of these cases, see 55 FR 13547

However, pursuant to section 4j(d)(2) of the statute as amended, this trading restriction would not apply under two circumstances. First, it would not apply if the Commission adopts rules which the Commission certifies to Congress require procedures and standards designed to prevent violations attributable to broker association trading. Second, the restriction would not apply to any contract market that implements rules designed to prevent violations of the Act attributable to broker association trading unless the Commission determines, by rule or order, that such rules are inadequate to prevent violations.[6]

After reviewing the above-mentioned legislation and the comments on the original proposal, the Commission has modified portions of its original rule proposal. These modified rules are intended to serve as the basis for certification to Congress that the Commission had in effect rules which required procedures and standards designed to prevent violations of the Act attributable to broker associations. Given the extended period of time since the regulations were first proposed and the recent legislative enactments, the Commission has decided to issue the modified regulations for comment rather than to issue final rules. This will provide commenters an opportunity to review the proposed regulations in light of any changed circumstances since they last were proposed.

II. Overview of Comments Received to Original Proposal

The Commission received letters from nine commenters regarding the proposed rules, including six futures exchanges,[7] two floor brokers, one futures commission merchant ("FCM") and one industry trade association.[8] In general, a majority of the commenters supported the Commission's goal of enhancing exchange surveillance capabilities by the registration of broker association members. The commenters, however, expressed concern that the proposed registration requirement was overly broad. More specifically, commenters stated that, although the proposed requirement would capture certain relationships and activities for which surveillance should be enhanced, the registration requirement also would capture certain activities and relationships which pose little potential for trading abuses. They argued that this scope could result in the collection of extraneous information which would dilute exchanges' abilities to use the registration requirement as a surveillance tool.

The Commission has carefully reviewed the comments and other information. As a result, several material changes have been made to the previously proposed rules.

III. Modified Proposed Part 156 Regulations

In formulating the modified regulations, the Commission has identified areas where the breadth of the rules as originally proposed might have diminished the surveillance benefit that the Commission intended the rules to provide. Also, the resulting modifications are intended to refine the coverage of the regulation to apply to relationships where there is an increased motivation or potential for trade practice abuses and to facilitate the collection of information which would assist in the detection of these abuses.

The modified rule proposal is designed to give exchanges flexibility in their implementation of the registration requirement. The exchanges would have some discretion, subject to Commission oversight, to define the scope of activity subject to registration, including what activity should be considered so minimal as to not require registration. Exchanges also would be permitted to determine the administrative details of registration and how best to integrate the data collected into their existing compliance programs.

A. Regulation 156.1 Definition of Broker Association

As originally proposed, the term "broker association" was defined to include two or more contract market members who had the following relationships: (1) Shared responsibility for executing customer orders, (2) shared access to each other's unfilled customer orders as a result of common employment, a shared clerk, or other types of relationships, or (3) shared profits and losses associated with brokerage or trading activity.

1 Comments Received

As noted above, the commenters each stated that the proposed definition encompassed certain activities or relationships which involved little increased potential for trading abuse.

a. *Shared Responsibility Relationships* The original proposed regulation defined any brokers who "share responsibility for executing customer orders" as a broker association. In this proposal, the Commission stated that this would include deck sharing arrangements, such as when a member hands off his deck or individual orders to another member before leaving the floor. The Commission noted that these relationships would provide the participating brokers with knowledge of each others' orders, causing an increased potential for trading violations As proposed, the rule could encompass a single instance where a member shared responsibility for or handed off an order. However, the Commission specifically requested comment on the minimum level of affiliated activity which could occur without requiring registration and whether exemptive authority should be given to the exchanges or otherwise should be addressed in the final rules.

Six commenters objected to this component of the proposed definition and several mentioned specific limited relationships involving shared responsibility which they believed should not be included in the proposed definition. In addition, certain commenters suggested alternative standards.

Every exchange which commented pointed out certain examples of deck sharing for which, in their opinion, registration would be inappropriate. For example, when a broker hands off an order prior to taking a vacation, the commenters argued, there are minimal reasons to require registration as a broker association. In such instances, there is little potential or incentive for the types of trading abuses which the registration requirement was designed to address. The CBT, as well as the KCBT and one floor broker, also mentioned circumstances where a broker may assist another broker in handling an overflow of orders which, in their opinion, did not warrant coverage by the proposed rule.

The CME recommended that the definition should be amended to include only those relationships where the shared responsibility is "knowing"

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[6] Under section 103 of the Futures Act, a new section 5(a)(13) was added to the Act which sets forth broker association disclosure requirements This provision requires each contract market to:

Provide for disclosure to the contract market and the Commission of any trade, business or financial partnership, cost-, profit-, or capital-sharing agreements or other formal arrangements among or between floor brokers and traders on such contact market where such partnership agreement or arrangement is material and known to the floor broker or floor trader.

[7] The exchanges are the Chicago Board of Trade ("CBT"), CME, CSC, Kansas City Board of Trade ("KCBT"), Minneapolis Grain Exchange ("MGE") and NYMEX

[8] Subsequently, Commission staff also provided each exchange with further opportunity to discuss the proposed rules at meetings in both New York and Chicago. In addition, in a comment letter regarding the Commission's proposed dual trading regulation, one additional trade association, the National Cattlemen's Association, commented on the need for regulation of broker associations

and "voluntary." For example, the CME stated that when an FCM uses several independent brokers to fill customer orders, these brokers may be considered a broker association under the Commission's proposal notwithstanding the fact that they may have no knowledge of any common relationship. The CBT suggested amending the rule to limit registration to "formal organizations which share profits and/or share access to customer orders within the same contract month on a continuous and regular basis."

The CSC and NYMEX proposed de minimis exemptions. At the CSC, there is an existing exemption whereby the term "associated brokers" is defined as those "who frequently share a deck of customer orders."[9] For the purposes of this CSC rule, the definition of "frequently" is trading occurring on two or more trading days within a week for a minimum of one bracket period per day.[10] NYMEX suggested that the Commission enact a "safe harbor" provision which exempts from the application of the rules those intra-day affiliations which occur on an infrequent or non-regular basis.

b. *Shared Access Relationships.* The rule as originally proposed was intended to cover broker relationships where access to customer orders results from circumstances other than relationships involving shared responsibility for executing customer orders. The Commission included in the original definition relationships arising from common employment or from a shared clerk but specifically requested comment on the breadth of this provision. The rule would have included all relationships which provide access "notwithstanding the fact that access cannot readily be demonstrated or that the broker association's practices do not intend that such assess be available."[11]

Six commenters objected to this proposal, stating that the inclusion of situations which involved limited potential for shared access would capture too much activity which is irrelevant for surveillance purposes. The CME commented that the definition as proposed could require registration of entities which were not intended to be permitted access or which actually may not share access to customer orders. The Exchange further stated that the Commission should direct the exchanges to determine and define the appropriate shared access situations which warranted registration. The CME believed that the term "shared access" should be replaced by the term "shared information respecting customer orders."

The MGE suggested that the definition cover access only when it is "likely" or "demonstrated." The KCBT suggested that the definition should be made more specific to include only those relationships "where there is a formal or informal relationship which could * * * provide continual access to the orders of other members." The Exchange explained that absent a continuing relationship, the motivation for non-competitive trading lessens to the point where increased regulation may not be beneficial.

Several exchanges mentioned specific problems with including all shared clerk relationships. The CME focused on specific types of clerk relationships to demonstrate the overbreadth of the definition. The Exchange stated that the sharing of a clerk does not necessarily result in the sharing of information. The CME stated that clerks usually transmit information to a particular broker and that knowledge is not necessarily shared among the brokers for whom the clerks are employed. The Exchange commented that, because firms employ various brokers, each with different clerk relationships, and due to the high turnover rate for clerks, it is unwieldy and impractical to require brokers to register with all other brokers with which a broker may share access on the basis of a shared clerk relationship. The CME additionally commented on the "shared access" component by stating that (1) the sharing of clerk expenses does not necessarily mean that information will be shared, (2) clerks who hold decks do not share knowledge of orders with brokers, and (3) it cannot be assumed that brokers having access to common firm wire and phone lines will have shared access to order information.

NYMEX, as well as the CSC and MGE, commented that brokers may share expenses for certain clerks, such as write up clerks; however, in such cases, no access to customer order information is available. NYMEX suggested that any relationships not considered to be shared access relationships be specifically excluded from registration requirements.

Five commenters suggested that employees of the same FCM or non-FCM clearing members and brokers used on an independent basis be excluded from the registration provisions. The FCM and FIA stated that, with respect to FCM employees, separate registration is unnecessary because exchange membership departments already list the name of a floor broker's FCM employer. As a result, the commenters stated that this information is already on file and easily available to exchange compliance staff. The MGE and CME noted that, under the proposal, when a firm uses several independent brokers to fill orders, these brokers may be considered a broker association, despite the fact the actual ability to share information is minimal.

c. *Shared Profits and Losses* Four comments were received on this part of the proposed broker association definition. While most commenters agreed that persons who share profits and losses should be considered a broker association, NYMEX mentioned that it should be made clear that shared profits and losses should not encompass shared costs, such as the costs of a common write-up clerk who does not have access to unfilled customer orders.

2. Proposed Regulation 156.1

After considering the comments, the Commission has revised the definition of what constitutes a "broker association." The Commission believes that the primary goal defining broker associations is to identify those relationships which may create the motive or opportunity for trade practice abuses and thus require enhanced surveillance. Based upon the comments received on the proposed regulations, the Commission believes that the definition as originally proposed may encompass too many incidental relationships where the increased potential for trade practice abuse is minimal.

For example, a broker association definition based on "shared access," without further clarification, may be susceptible to an interpretation that could be expansive enough to render registration ineffective as a surveillance tool. The comments also suggest that the clerk-sharing relationships should not be an independent basis for registration. Broker-clerk relationships are constantly in flux[12] Thus, from an administrative standpoint, requiring brokers to register on the basis of these clerk relationships and requiring exchanges to monitor these relationships may be overly burdensome. Further, this may require identification of too many incidental relationships to be effective as a surveillance tool. As a result, the surveillance benefit accruing from a registration requirement intended to

[9] CSC Rule Definitions ¶ 206

[10] At the CSC, the trading day is comprised of fifteen bracket periods. Each bracket period is 30 minutes

[11] 55 FR 13544

[12] For example, in New York, although larger firms may have regular clerks, the use of "floaters" is a common practice.

single out relationships requiring heightened surveillance might be reduced.

Based on these comments, the Commission is deleting the "shared responsibility" and "shared access" components of the definition. The modified proposed Regulation 156.1 would define the term broker association to include "two or more contract market members with floor trading privileges who: (1) Are employees of the same employer, (2) are employer and employee, (3) share profits and losses associated with their brokerage or trading activity, or (4) regularly share a deck of orders." The Commission believes that these relationships are sufficiently discrete and constant to be useful in identifying relationships among brokers for further monitoring. In specifying these particular relationships, the Commission believes that it has identified those relationships where enhanced surveillance will be cost-effective.[13]

a. *Employees of the Same Employer and Employer-Employee Relationships.* In the original proposed rule, the definition included exchange members who had access to each others' customer orders by virtue of "common employment." In the modified proposal, the Commission would maintain the substance of this portion of the original rule and would consider members who are employees of the same employer as a broker association. The Commission also has determined that members engaged in an employer-employee relationship with each other also should be considered a broker association.

The Commission believes that in both types of relationships members are engaging in an ongoing relationship whereby brokers, among other things, have continued access to common desks and common clerks and thus there is a definite potential for one broker to discover information as to another broker's orders. This, in turn, could provide an incentive for a broker to abuse or to conspire to abuse that order information. Every exchange which currently regulates broker associations or similar affiliations of brokers considers employees of the same employer and brokers engaged in an employer-employee relationship to be affiliated.[14]

The modified proposed rule would not include within a broker association independent brokers used by the same firm to fill customer orders. As stated by the commenters, in many instances the connections among these brokers are tenuous and constantly in flux. The actual potential for independent brokers gaining knowledge of the orders of other independent brokers simply because they relieve orders from the same FCM is minimal.[15]

b. *Shared Profits and Losses.* The definition would retain sharing of profits and losses as the basis for requiring registration as a broker association. The definition is intended to encompass all formal and informal agreements whereby direct or indirect financial benefits accrue to the brokers. Thus, shared trading profits and losses would include, for example, shared commissions and shared error account profits and losses. As noted in the Commission's original proposal, if two or more contract market members have a profit-sharing relationship, there is an added incentive for these members to trade with each other. In order to obtain shared profits or to received shared commissions, members may be more likely to engage in abusive practices. This provision would not encompass cost-sharing arrangements, such as the sharing of costs of a common write-up clerk, which do not create incentives for members to trade with each other.

c. *Regularly Share a Deck.* In the regulation as originally proposed, deck sharing relationships were specifically included as a broker association activity in that they constituted "shared responsibility for executing customer orders." Notwithstanding the elimination of the "shared responsibility" component of the definition, the Commission believes that regular deck sharing arrangements continue to have the potential for trading abuses that should be addressed in the regulations.

"Deck sharing" relationships involve situations whereby a broker "hands off" his deck of orders or any individual orders to another broker on the floor. In certain instances, a broker may hand off orders to another broker and may remain on the floor. For example, in the event a broker is holding a deck of orders and the pace of trading quickens, that broker may hand off a portion of his orders to another broker for order execution assistance. In other instances, such as a lunch break, a broker may hand off his deck and leave the floor of the exchange.

Both of these circumstances may create an opportunity for trade practice abuses.[16] Where a broker hands off orders to another broker for order execution and remains on the floor, he can benefit from the knowledge gained from the orders before handing them off. That broker may trade ahead of or otherwise take advantage of those orders. If a broker hands off a deck of orders so that he can temporarily leave the floor, the other broker also may benefit from the knowledge gained from those orders. For example, if unexecuted orders are returned to the original broker upon his return to the floor, the broker to whom the orders were originally handed off could have the opportunity to abuse those orders.

For a relationship to be considered "deck sharing," a broker must have knowledge of the orders to be shared. For example, if a broker is unable to handle the volume of his orders, he may direct his clerk to give any "overflow" orders to another broker. Where the clerk does so without the broker having knowledge of the terms of those orders, a "deck sharing relationship" would not exist.

So as to exclude de minimis "deck sharing" activity, modified proposed Regulation 156.1 would require that two or more contract market members "regularly" share a deck of orders for that activity to necessitate registration. The Commission also has provided in Regulation 156.2(c)(1) that the exchanges would be permitted to exercise discretion to determine what deck sharing activity is not "regular." For further discussion, see Section III.D below.

d. *Members with Floor Trading Privileges.* In this modified proposal, the Commission would make the application of the regulation to contract market members more precise by including only those members "with floor trading privileges." Exchange commenters had expressed some concern that, in light of the way in which certain exchanges define the term "member," the regulation could be read to apply to firms as well as floor brokers

[13] Since identification of financial arrangements and other relationships across pits would aid the detection and deterrence of customer order abuse, the proposed regulation would not limit broker association membership to members in the same pit as suggested by the CBT.

[14] See, e.g., CME Rule 515A.1.a.; Comex Rule 4.24; CSC Rule Definitions ¶ 206; New York Futures Exchange Rule 3; and NYMEX Rule 6.42(C).

[15] In this regard, existing Commission rules 155.2 and 155.3 require exchanges and FCMs, respectively, to establish and enforce trading standards intended to diminish the potential for abuse of customer orders

[16] Two of the exchanges which monitor broker associations consider regular deck sharing to be a basis for requiring broker association registration. See, e.g., CME Rule 515.A1.c and CSC Definition ¶206.

and traders.[17] This was not the Commission's intent. Although a broker's trading activity for a firm or a broker's employment by a firm may give rise to a need to register under the regulations, the purpose of the registration requirement is to assist in the detection of abuses stemming from floor trading activity. Therefore, only the activity of persons with floor trading privileges would trigger registration.[18]

e. *Multiple Memberships.* In its original proposal, the Commission requested comment on whether memberships in multiple associations should be addressed in the proposed rules. For example, should all of the members of two or more broker associations which have members in common be deemed to be affiliated?

The commenters opposed the aggregation of associations having common members into one association. NYMEX argued that this would have the potential to undermine the goals of the proposal because the inter-connections among brokers potentially would result in too many inter-connections to be monitored effectively. The CBT noted that if two registered broker associations have common members, this information will be available to the Exchange as part of the registration documents and the CBT will continue to monitor for any abuses arising from the dual association. The CSC believed that its rule requiring an individual broker registering as part of an association to indicate all associations with which he is affiliated would sufficiently allow the Exchange to "achieve a better profile" of the associations.

Given that information as to other affiliations is to be included in the registration information, multiple memberships are not otherwise addressed in the modified rule proposal. The proposed registration requirement should provide sufficient information to monitor effectively for potential trading abuses arising from relationships among broker associations which have common members. Nothing in this regulation, however, would prohibit contract markets from addressing multiple memberships in their own broker association rules.

In this connection, the Commission emphasizes that the relationships required to be included in the definition of a broker association would be a minimum standard for contract markets to follow. The Commission would encourage contract markets to continue to assess evolving broker association relationships and to determine whether other broker relationships may be appropriate for registration.

B. Regulation 156.2(a): Registration of Broker Association

As originally proposed, this provision would have prohibited any member of a broker association from receiving orders, executing a transaction or engaging "in any activity in furtherance of a broker association" unless such entity has been registered with the appropriate contract market. Although commenters generally agreed with the underlying purposes of the rule, they believed that the regulation as drafted, in particular, the "activity in furtherance of a broker association" language, was overly broad. For example, the CME stated that this language was ambiguous because it potentially could capture activity leading to the formation of a broker association. The CBT suggested that since the proposed rule was so broadly worded in this respect, many extraneous activities would fall within the proposed prohibition. For instance, the CBT stated that if a member executes a Customer Type Indicator ("CTI") 3 trade[19], this activity could be in violation of the registration requirement unless these members previously had registered as a broker association. The Exchange also noted that if a broker merely handed an order from a runner to another broker, this activity would be in furtherance of a broker association and thus would be subject to the registration requirement.

For these reasons, the modified proposed rule would delete the prohibition against unregistered members of a broker association "engaging in any activity in furtherance of a broker association." However, the modified proposed Regulation 156.2(a) would continue to prohibit members of an unregistered broker association from receiving orders or from executing a transaction. As with the original rule, this provision would make failure to register a violation of the regulations which could be enforced directly by the Commission against individual members of the association.

The modified proposed Regulation 156.2(a) also would require that a broker association member register with the appropriate contract market no later than ten days after the first event requiring registration. If a broker is engaged in activity which is potentially subject to this registration requirement, the ten-day grace period would give that broker an opportunity to determine whether these rules and the pertinent exchange rules apply and to submit the required documentation.[20]

C. Regulation 156.2(b): Contract Market Rules Required

Regulation 156.2(b) would mandate that each contract market maintain in effect rules that, at a minimum, define the term broker association to include those relationships set forth in Regulation 156.1, prohibit a member from acting as part of a "broker association" in the manner described in Regulation 156.2(a), and would require registration of broker associations with their respective contract markets. Further, this regulation would specify the categories of identifying information that each contract market will be required to collect.

In originally proposing this rule, the Commission intended that the information required to be collected be the minimum information necessary for the identification of relationships among broker association members. Several commenters, however, questioned the benefit of requiring the collection of certain items of information. The CME stated that because a shared clerk does not indicate shared knowledge of customer orders, the collection of information regarding employees of an association, including clerks, is of little utility. The CSC stated that the information required is not necessarily applicable to affiliations on the CSC. For example, the CSC stated that the collection of account numbers, legal form of association and person authorized to represent the association will not be relevant to informal associations. The CSC further stated that information as to employees, investors, partners, shareholders and contract market members will not be useful for compliance efforts. The CBT suggested that each exchange be given the authority to determine the information necessary in order to assure adequate

[17] See, e.g., NYMEX Rule 1.22 which states, "(t)he term 'Member' shall mean Members of the Exchange and Member Firms."

[18] As will be discussed below, however, it is possible that an exchange may require that a firm be responsible for the registration of its brokers. See Section III.C. *infra*.

[19] A CTI–3 trade is a trade executed for "another member present on the exchange floor, or an account controlled by such other member." Commission Regulation 1.35(e)(3).

[20] This ten-day period is comparable to other Commission and exchange reporting and notification requirements. See, e.g., Commission Regulation 18.04 (trader with reportable position must report within ten calendar days following assumption of position); CBT Rule 425.03 (to classify position as bona fide hedge, entity must file statement no later than ten business days following exceeding of speculative position); and CME Rule 543.D (in financial contracts, person wishing to exceed speculative position limits must file application within five business days after the limits are exceeded).

surveillance and detection of trade practice abuses in its markets.

The Commission has made some revisions to the information collection requirements. First, the new requirement would expressly clarify the Commission's previous intention that a broker association registration contain the required information only if applicable. Thus, for example, if a broker association did not have a name or legal organization, this information obviously would not be required to be submitted. The Commission, however, does not intend this modification to be construed to grant to the exchanges the discretion to determine what information should be collected.

Second, in the modified proposal, the Commission has replaced the reporting of employees, partners, shareholders, investors and contract market members of a broker association with a reporting requirement for "all persons or entities having a direct beneficial interest in the association and any employees who are contract market members." The original proposed rule could have required the reporting of some information extraneous for surveillance purposes. For example, if a broker association were comprised of two Merrill Lynch employee-brokers, no purpose would be served by requiring the association to name each shareholder of Merrill Lynch. The collection of information requirement, therefore, has been limited to those persons or entities which have a direct ownership stake in association activities or who directly benefit from association activities. Since in the above-mentioned circumstance Merrill Lynch shareholders would have a direct interest in the corporate entity but an indirect interest, if any, in any Merrill Lynch broker associations, such individuals would not have to be identified.[21]

This new requirement would eliminate the reporting of association employees except to the extent that the employees are contract market members. The Commission believes that due to the high incidence of employee turnover at exchanges[22] and due to the limited utility of the information, the reporting of association employees would impose an unnecessarily high burden on the associations without a corresponding surveillance benefit.

Third, the Commission would require the submission of identifying badge numbers, as well as the originally-proposed alpha badge symbols. Identifying badge numbers are now used at certain exchanges and use of these numbers will assist in the monitoring of broker activity.

Any information contained in the registration statement which becomes deficient or inaccurate would be required to be updated or corrected promptly with the contract market. This portion of the regulation is unchanged from the original proposal. As stated in the original proposed rules, this is intended to assure the continued usefulness of such information for monitoring purposes.

As with the original proposed regulation, modified proposed Regulation 156.2(b) would not expressly state whether the broker association, its members, or specifically designated individuals would be responsible for the administrative requirements for registration. The Commission continues to believe, consistent with the comments, that each contract market should determine the most effective means for assuring compliance. Since each market is responsible for collecting the data and integrating it into its compliance systems, the contract market should decide how best to administer the registration process. As with the registration requirement, each broker association member would be responsible for compliance with administrative requirements, update requirements and the correctness of the information file.

The Commission notes that the information collection requirements would be a minimum standard for the exchanges to follow. If exchanges believe that additional information may assist them in monitoring broker association trading activity, the exchanges could require that such information be submitted.

D. Regulation 156.2(c): Other Contract Market Rules

The Commission believes that, due to the widely varied and constantly changing nature of broker association activity, there should be some measure of flexibility in these regulations. As a consequence, the Commission would permit the exchanges, subject to Commission oversight, to submit rules which (1) define, in a manner consistent with the purposes of the part, those relationships covered by the term "regularly share a deck of orders" and (2) set forth circumstances under which exemptions may be granted for de minimis activity. Such rules, if any, would be submitted to the Commission pursuant to section 5a(12) of the Act and Commission Regulation 1.41.

As stated previously, a deck sharing relationship includes relationships where a broker hands off a deck of orders or individual orders regardless of whether that broker subsequently leaves the floor. The Commission believes that there can be activity in these relationships which is so infrequent as to not warrant registration. For example, if a broker hands off a deck during a lunch break to the same broker one time per week, monitoring of the two brokers' trading activity may not be useful. As that activity occurs more frequently, the potential for trade practice abuses and the resulting benefit from registration increases. The Commission believes that while the frequency of these occurrences is a factor to be considered, the length of time during which the orders are handed off is not. A broker to whom a deck has been handed gains knowledge of those orders irrespective of whether the broker has the orders for five minutes or an hour.

The regulation would provide further that in the absence of rules which define the term "regularly share a deck of orders," a contract market must determine whether a deck sharing relationship involves "regular" sharing and document the reasons for each such determination on a case-by-case basis. Each exchange should advise its membership of the substance of such determinations so as to provide guidance regarding the scope of the requirement.

With respect to de minimis activity, the Commission recognizes that there may be certain circumstances which technically fall within the description of a broker association relationship, but which involve little potential for trading abuse. The regulation therefore would provide that exchanges may submit proposed rules which would implement a de minimis activity exemption. The Commission, among other things, would review any such proposed rules to assure that they are consistent with the purposes of part 156. For example, a broker who takes a vacation or other non-regular extended absence and hands off his deck to another broker conceivably could be considered to "share a deck" under the Commission's broker association definition. Under this circumstance, however, there is no mutual knowledge of customer orders, and there is no potential for the types

[21] The Commission emphasizes, however, that the proposed regulations should be applied so as to discourage any situation where a broker might establish a corporate entity solely to shield himself from the reporting requirement. For example, if a broker established a corporation as a sole shareholder, hired two trader-employees, and then proceeded to trade with these employees, the broker would be considered to have engaged in profit sharing activities with the employees. Also, in essence, the broker would be acting as a de facto employee of the corporation and thus would be required to be registered.

[22] For example, during the period of January 1990–June 1990, 2978 CME firm or member clerks were hired, transferred or terminated

of trade practice abuses associated with broker associations. Thus, the Commission would permit this type of activity to be exempted from registration pursuant to appropriate exchange rules.[23]

E. Regulation 156.3: Contract Market Program for Enforcement

Modified proposed Regulation 156.3 would require each contract market to implement a program to monitor the trading activity of broker association members that is integrated with the contract market's overall trade practice surveillance program. This provision is unchanged from the original proposal. In the original proposal, the Commission stated that the regulation would not require an exchange to employ any particular method for integrating broker association registration information into its compliance program. The Commission further stated that it believed that each exchange should retain the flexibility to tailor implementation to its existing compliance systems. This is consistent with the congressional extent underlying the Futures Act. In the conference report accompanying the Futures Act, it was stated that "(t)he Conferees anticipate that, in adopting rules under this provision, the Commission should take into account the availability of existing data collection systems which can be used effectively for compliance purposes under this section in order to avoid duplicative registration requirements." The Commission intends to apply proposed Regulation 156.3 in a manner consistent with that expectation.

The Commission contemplates that, at a minimum, any exchange surveillance system would be able to identify broker association members, their trading activity, and the patterns of trading among these members. The exchanges which commented on this provision each stated that they currently have in place surveillance programs necessary to detect trading-related abuses that may arise among affiliated members.

IV. Miscellaneous Comments Regarding Part 156

A. NFA registration

In the original proposed rules, the Commission requested comment on the delegation of registration functions to the NFA.[24] Three of the four exchanges which commented stated that delegation to the NFA would adversely affect the ability of exchanges to monitor broker association activity. CBT and CSC cited the extra administrative and clerical burdens involved. The CME stated that it has designed its registration database to be compatible with its clearing system. Monitoring compliance with the CME trading restrictions (i.e., the percentage limitations) is accomplished by combining the information in both the broker association registration database and the cleared trades database. The Exchange stated that in the event that registration was performed by the NFA, it could be very difficult to integrate their database with the CME database. NYMEX commented that although the idea "may be worthwhile," the Exchange presently would not delegate these responsibilities if such an option were possible under the rules.

Accordingly, the Commission believes that delegation of broker association registration functions to the NFA would be difficult to implement and appears unnecessary to achieve the goals of the rules.

B. Legal Ramifications of Registration

The CSC expressed concern that the registration of a broker association not give rise to a relationship that could itself be deemed a legal entity from a liability or tax perspective. The Exchange questions whether a broker could be held responsible for customer losses by another broker-member of the association or whether broker association members would accrue tax liabilities for other members.

The Commission has proposed this registration requirement to assist in the detection of potential trade practice abuses. Aside from the legal responsibilities imposed in part 156, the Commission would not intend the mere occurrence of registration as a broker association to create or alter the legal relationships among members of a broker association.

V. Conclusion

Although broker association relationships have been found to provide advantages for customers and brokers, they also may increase the potential for trading abuses. In these proposed part 156 rules, the Commission would require procedures and standards designed to focus exchange surveillance systems on broker association relationships to deter and detect, and thereby prevent, potential trade practice abuses stemming from such relationships. The Commission believes that the proposed part 156 rules would create a practical surveillance tool which strikes an appropriate balance of identifying those relationships which warrant special attention while limiting the data made available to that which is useful.

The proposed rules would grant to the exchanges, subject to Commission oversight, the flexibility to determine the administrative details of registration and to determine how to integrate registration data into their own compliance systems. Exchanges also would have the opportunity to specify and to establish specific standards for applying the "regularly" sharing a deck provision. Based on the experience gained through the operation of the regulation, the Commission would determine what, if any, further oversight of broker association activity would be necessary and appropriate.

Based on the foregoing, if these regulations were adopted as proposed, the Commission would expect to certify that these rules require procedures and standards designed to prevent violations of the Act attributable to broker associations.

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The part 156 rules would affect contract markets, FCMs, contract market members, and broker associations.

The Commission previously has determined that contract markets are not "small entities" for the purposes of the RFA, and the Commission, therefore, need not consider the effect of the proposed regulations on contract markets. 47 FR 18618, 18619, April 30, 1982. The Commission has determined that FCMs should be excluded from the definition of "small entity" based upon the fiduciary nature of the FCM/customer relationship as well as the fact that FCMs must meet minimum financial requirements. 47 FR 18618, 18619, April 30, 1982.

With respect to contract market members and broker associations, as the Commission noted in the original proposal, certain contract market members and broker associations could be considered small entities for the purposes of the RFA.[25] The regulation has been designed, however, so that it can be implemented without imposing a significant economic burden on a substantial number of small entities. The regulation will have no effect on the

[23] Of course, however, if the two brokers were common employees or were engaged in a profit sharing arrangement, registration would be required.

[24] 55 FR 13549.

[25] 55 FR 13550

types of conduct which would have the greatest economic impact on members and broker associations: (1) The ability of the members to associate and (2) the extent to which members of an association trade with each other or with anyone else.

Further, contract market members already are required by exchange rules to file information substantially similar to the information that would be required to be filed, such as identifying information for membership applications and large trader and speculative position limit reporting requirements. With respect to broker associations, the information required to be filed would be substantially similar to the information required for contract market members, as well as the information required for floor broker registration, and thus should not require a burdensome separate and distinct information gathering process. Moreover, at several exchanges, broker associations and their members already are subject to informational reporting requirements. As a result of the above, the Chairman, based on an initial review of available data, certified that these rules would not have a significant economic impact on a substantial number of small entities.[26]

The revisions to the original proposed rules would further reduce any potential economic burden on small entities which may result from the regulations. As discussed in detail above, the regulations have been revised to eliminate any potential overbreadth. Under the revised rules, both the types of relationships which are potentially subject to the registration requirement and the categories of information required to be collected by contract markets have been carefully circumscribed.

Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1168 (5 U.S.C. 605(b)), the Chairman certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted these rules in proposed form and its associated information collection requirements to the Office of Management and Budget ("OMB"). At that time, the Commission anticipated no increase in burden. The Office of Management and Budget approved the collection of information associated with this on June 29, 1990, and assigned OMB control number 3038–0022 to the rules. The Commission is now re-proposing these rules. The burden associated with this entire collection, including these modified proposed rules, is as follows:

Average burden hours per response: 81.86
Number of respondents: 6687
Frequency of response: on occasion

The burden associated with these rules is borne by broker associations and their respective exchanges and is as follows:

Average burden hours per response: 2.033
Number of respondents: 800
Frequency of response: annually

Copies of the OMB approved information collection package associated with these rules may be obtained from Gary Waxman, Office of Management and Budget, room 3220, NEOB, Washington, DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 156

Broker associations, Commodity futures, Contract markets, Members of contract markets, Registration requirement.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4b, 4c, 5(b) and 8a(5) thereof, 7 U.S.C. 6b, 6c, 7(b) and 12a(5), the Commission hereby amends chapter I of title 17 of the Code of Federal Regulations as follows:

1. 17 CFR part 156 is added to read as follows:

PART 156—BROKER ASSOCIATIONS

Sec.
156.1 Definition.
156.2 Registration of broker association.
156.3 Contract market program for enforcement.

Authority: 7 U.S.C. 6b, 6c, 7(b), and 12a.

§ 156.1 Definition.

For the purposes of this part, the term *broker association* shall include two or more contract market members with floor trading privileges who: (a) Are employees of the same employer, (b) are employer and employee, (c) share profits and losses associated with their brokerage or trading activity, or (d) regularly share a deck of orders.

§ 156.2 Registration of broker association.

(a) *Registration required.* It shall be unlawful for any member of a broker association to receive orders or to execute a transaction unless such entity has been registered with the appropriate contract market in accordance with paragraph (b) of this section. A broker association member must register with the appropriate contract market no later than ten days after the event requiring registration.

(b) *Contract market rules required.* Each contract market must maintain in effect rules, which have been submitted to the Commission pursuant to section 5a(12) of the Act and Commission Regulation 1.41, that, at a minimum, (1) define the term "broker association" to include those relationships set forth in § 156.1 of this part, (2) prohibit the conduct described in paragraph (a) of this section, and (3) require all broker associations to be registered with their respective contract markets. Such registration shall include the following information, if applicable:

(i) Name of broker association;

(ii) Names of persons or entities having any direct beneficial interest in the association and any employees who are contract market members;

(iii) All identifying badge symbols and numbers of association floor members;

(iv) Account numbers for all accounts of any association member, accounts in which any association member or members have an interest, and any proprietary or customer accounts controlled by a member or members of the association;

(v) Identification of all other broker associations with which each member is associated;

(vi) Legal form of the broker association; and

(vii) Individual(s) authorized to represent the association.

Any information contained in the registration statement which becomes deficient or inaccurate shall be updated or corrected promptly with the respective contract market.

(c) *Other contract market rules.* (1) Each contract market may submit rules pursuant to section 5a(12) of the Act and § 1.41 that define those relationships covered by the term "regularly share a deck of orders" in a manner consistent with the purposes of this part. In the absence of such rules, a contract market must determine whether a relationship is covered by this term and document the reasons for each such determination on a case-by-case basis.

(2) Each contract market may adopt rules, which must be submitted to the Commission pursuant to section 5a(12) of the Act and Commission Regulation

[26] 55 FR 13551.

1.41, which set forth circumstances under which exemptions from the registration requirement contained in this section may be granted for de minimis activity.

§ 156.3 Contract market program for enforcement.

A contract market must, as part of its responsibilities pursuant to the Act and § 1.51, demonstrate effective use of broker association registration information to monitor the trading activity of broker associations and their members and to secure compliance with all other contract market bylaws, rules, regulations and resolutions which may pertain to such associations or their members.

Issued in Washington, DC, this 24th day of November 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-29077 Filed 12-2-92; 8:45 am]

BILLING CODE 6351-01-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM93-1]

Complexity in Rates Inquiry

AGENCY: Postal Rate Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is soliciting suggestions from interested persons regarding the consideration which should be given to complexity when examining rate and classification schedules. The applicable statute directs the Commission to consider the "simplicity of structure" and "identifiable relationships between the rates" as well as "the desirability of special classifications" in making its recommendations. The Commission believes it might be productive to focus on these topics outside the confines of a specific rate or classification proceeding. After reviewing the responses filed, the Commission will determine whether modifications of our filing requirements to provide greater emphasis on these topics should be considered. It is also possible that one or more classification proceeding should be initiated. Another alternative is the Commission issuing a document consolidating the different viewpoints. This document would be distributed to the Postal Service, its Board of Governors, the Congressional Committees with oversight jurisdiction, and other interested parties. Providing a forum for an open dialogue on rate complexity and related concerns should prove helpful both to the Postal Service and to those who use its service offerings. We are including a list of issues we find relevant to the topic. We invite interested parties to comment on these, or any other aspect of this issue.

DATES: Comments responding to this advance notice of proposed rulemaking must be submitted by February 1, 1993.

ADDRESSES: Comments and correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street NW., suite 300, Washington, DC 20268-0001 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Acting Legal Advisor, Postal Rate Commission, 1333 H Street NW., suite 300, Washington, DC 20268-0001 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION: 39 U.S.C. 3622(b)(7) specifies that in recommending rates, the Commission shall consider "simplicity of structure for the entire schedule and simple, identifiable relationships between the rates." The Commission is also to take into account "the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs." 39 U.S.C. 3622(b)(6). In recommending changes in classification, such as new rate categories to reflect and encourage the tendering of mail which costs less to process and deliver, the Commission has to consider the desirability of special classifications from the point of view of both the user and of the Postal Service. 39 U.S.C. 3623(c)(5). Additionally, each class of mail is required to recover all the costs attributable to it. 39 U.S.C. 3622(b)(3).

The Commission believes it might be profitable to focus on the topic of the appropriate amount of complexity in rates and classifications outside the confines of a case proposing specific changes. The Commission believes it would be helpful to provide a forum for the exchange of ideas on whether it is possible to simplify the existing rate and classification schedules while continuing to reflect the other necessary considerations. After reviewing the responses, the Commission will determine whether modifications of our filing requirements to have greater emphasis on these topics should be considered. It is also possible that one or more classification proceeding should be initiated. Another alternative is a document consolidating the different viewpoints, distributed to the Postal Service, its Board of Governors, the Congressional Committees with oversight jurisdiction and other interested parties. This document would provide useful guidance for future filings and may make the consideration of such filings more efficient. After reviewing the initial responses, the Commission will consider whether a second round of comments should be scheduled.

We are including a list of issues we initially find relevant to the topic of complexity in postal rates. We invite interested parties to comment on these, or any other aspect of this issue.

In considering the competing interests of (1) pursuing simplicity and (2) offering a multiplicity of rates to reflect different mailer and mail matter characteristics, it is important to consider the far-reaching scope of the rate and classification schedules. For example, second class is generally considered to be the most complex. However, one should remember that in fiscal 1991 those rate and classifications schedules determined the eligibility and rates for 10 billion pieces of mail sent by approximately 26,000 different publications, which vary widely in terms of circulation, weight, content, frequency and method of entry.

In the most recent omnibus rate case, the Commission was asked to recommend a number of changes in rate structure; that is, changes in the way mail is grouped in order to apply a specific rate. For example, as one of its many proposals to change classifications, the Postal Service suggested, and the Commission recommended, dividing the third-class bulk rate schedule and providing different rates according to processing categories, letter- and flat-size. Most of the rate restructuring in the last rate case added complexity to the relevant schedule. Some, however, simplified the structure, for example, changing to an unzoned rate for more weight categories in Priority Mail. In the last case, the Commission did not recommend all the proposals which would have added more complexity to the schedules. For example, the Commission did not accept a party's proposal that the current unitary additional ounce charge for First Class be divided into three separate charges, depending on the number of additional ounces. The Commission cited the additional complexity as one of the reasons for rejecting the proposal.

During the rate case, complexity did not receive as much attention as some of the other rate-setting considerations. Now, however, there may be a greater interest in the issue of complexity A report completed recently by a Competitive Service Task Force, made

up of representatives of the Postal Service and customers, made many references to a need to reduce complexity. For example, the number of price levels was cited as a reason users of advertising mail seek alternatives. Report, p. 7. The Report's section addressing second class criticized the complexity of pricing on the same page it both proposed adding the complexity of negotiated prices reflecting special accommodations and complained that some of the rates are not cost-based. *Id.* at 30. Indeed there are many other calls in the Report for new discounts and classifications whose addition would result in more complexity. *E.g., id.* at 7, 9, 11–12.

Clarification of the appropriate consideration of complexity in rates is called for, especially in light of the twenty-year history of cost-based rate setting. Therefore, interested parties are invited to address one or more of the following questions. Comments should deal with the issue of complexity, but are not restricted to the questions listed below.

1. In what specific schedules or classifications should simplification be considered?

2. Would simplification lead to increased fairness, after taking into account the different situations of the different mailers?

3. How important is simplicity with respect to the various rate schedules? That is, can complexity be accommodated more easily in some rate schedules than in others?

4. Should the frequency of use be a consideration with respect to complexity (that is, higher volume users could be expected to have less difficulty using a complex rate schedule)?

5. Should mailers be given more options to choose between simplified rates and the regular rate schedule (for example, the flat-rate envelopes in Priority and Express Mail)?

6. Should the Commission's filing rules require a more thorough examination of the effects of complexity?

7. What criteria should be considered at the same time as complexity and how should the weight of those other criteria be determined?

8. Have computer, electronic scales and other advanced methods for determining postage reduced the need for simplicity?

9. How much weight should be given the difficulty of administering a more complex rate schedule, and should the weighting be different among the different subclasses?

10. Are there any content-based classifications that could be simplified consistent with the statute?

11. What consideration should be given the additional complexity if a proposal calls for a new subclass, rather than a rate category within an existing subclass?

12. Should the structure of competitors' rate schedules be a factor in considering the appropriate amount of complexity?

13. Is the pursuit of simplicity compatible with competitiveness?

14. What factors should be used in considering the added complexity brought about by rates which are more cost-based, especially in light of increased efficiency and equity from rates more closely aligned with costs?

15. How effectively do mailers respond to signals (which usually increase complexity) sent through rates?

16. What criteria, including equity, should be taken into consideration if proposals are made to increase simplicity by increasing the degrees of cost averaging?

Issued by the Commission on November 27, 1992.

Charles L. Clapp,

Secretary.

[FR Doc. 92–29280 Filed 12–2–92; 8:45 am]

BILLING CODE 7710–FW–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 421

[BPO–083–P]

RIN 0938–AF84

Medicare Program; Revisions to Criteria and Standards for Evaluating Intermediaries and Carriers

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

ACTION: Notice of proposed rule making.

SUMMARY: This rule proposes technical revisions to Medicare regulations intended to simplify and improve our system for evaluating the performance of fiscal intermediaries and carriers in the administration of the Medicare program. Currently, we evaluate intermediaries using performance criteria and standards announced in an annual notice in the **Federal Register.** We propose to clarify the methodology for establishing these criteria and standards. For consistency, we propose comparable regulation requirements for the evaluation of carrier performance.

These proposed revisions are published in accordance with sections 1816(f) and 1842(b)(2) of the Social Security Act which require us to develop standards, criteria, and procedures to evaluate an intermediary's or carrier's overall performance.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 1, 1993.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO–083–P, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201 or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21027.

Due to staffing and resource limitations, we cannot accept audio or video comments or facsimile (FAX) copies of comments. In commenting, please refer to file code BPO–083–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 245–7890).

FOR FURTHER INFORMATION CONTACT: Larry Pratt, (410) 966–7403.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1816 of the Social Security Act (the Act), public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with the Secretary of HHS. These agencies or organizations are known as fiscal intermediaries, and they perform bill processing and benefit payment functions for the Medicare program. Under section 1842 of the Act, the Secretary is authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B (Supplementary Medical Insurance) of the Medicare program. Beneficiaries, physicians and suppliers of services submit claims to these carriers which in turn make appropriate payment.

Beginning in 1980 for intermediaries and in 1981 for carriers, we have been

evaluating the effectiveness and efficiency of contractor operations through a system of criteria and standards called the Contractor Performance Evaluation Program (CPEP). On June 23, 1980 we published regulations at 42 CFR 421.120 and 421.122 to implement the statutory requirement in section 1816(f) of the Act that we establish by regulation our criteria and standards for evaluating intermediary performance.

We revised §§ 421.120 and 421.122 on February 18, 1983 (48 FR 7178) to provide for publication of **Federal Register** notices to announce intermediary criteria and standards applicable during each fiscal year. Since that time we have been publishing our criteria and standards for intermediaries in the **Federal Register** as a notice.

Section 2326(c) of the Deficit Reduction Act of 1984 (Pub. L. 98–369) amended section 1816(f) of the Social Security Act by deleting the requirement that we establish intermediary performance criteria and standards by regulation. At the same time, section 2326(c) added a requirement to section 1816(f) for intermediaries and to section 1842(b) for carriers that we publish in the **Federal Register** the criteria and standards against which we evaluate both intermediaries and carriers, and that we give the public an opportunity to comment before implementing the criteria and standards. While Public Law 98–369 removed the requirement to establish performance criteria and standards "by regulation," we believed that maintaining a discussion of the criteria and standards in our regulations helped clarify the process and substance of the criteria and standards.

II. Performance Evaluation Periods

To the extent possible, we make every effort to publish the criteria and standards prior to the beginning of the Federal fiscal year (October 1–September 30). In general, the performance evaluation period which the criteria and standards measure is the Federal fiscal year.

In some instances, we have not published a **Federal Register** notice before the new fiscal year began. Intermediaries, carriers and other readers of the **Federal Register** were instructed through the notice when it was published that until and unless notified otherwise, the criteria and standards which were in effect for the previous fiscal year remain in effect. In those instances where we are unable to meet our goal of publishing the subject **Federal Register** notice before the beginning of the Federal fiscal year, we reserve the right to publish the criteria and standards notice at any subsequent time during the year. If we choose to publish a notice in this manner, the performance evaluation period for any standards and criteria that are the subject of the notice will be revised to be effective on or after the first day of the first month following publication. Hence, any revised criteria and standards measure performance prospectively; that is, we do not apply new measurements to assess performance on a retroactive basis.

Also, it is not our intention to revise the criteria and the standards which will be used during the evaluation period once this information has been published in the **Federal Register** notice. However, on occasion, either because of administrative considerations or legislation, there may be need for changes that have direct impact upon the criteria and standards previously published, or that require the addition of new criteria and standards, or that cause the deletion of previously published criteria and standards. Should such changes be necessitated, we will issue a **Federal Register** notice prior to implementation of the changes.

III. Use of Criteria and Standards

Criteria and standards are the performance requirements we use to evaluate the performance of intermediaries and carriers in meeting their contractual obligation to HCFA to effectively and efficiently administer the Medicare program. Conceptually, criteria were expected to be distinguished from standards. When § 421.122 was established we intended to measure performance statistically, or numerically by using "statistical standards", basing decisions on available statistical reports. We intended to measure broad categorizations of performance, using "criteria" (§ 421.120), by using information made available through means other than statistical reports (e.g., on-site sampling). Moreover, we intended that before evaluation of performance using the statistical standards took place, a contractor would be required to be evaluated by and pass the requirements of the criteria.

The application of intermediary criteria and standards to the evaluation process was originally defined in the **Federal Register** on June 23, 1980, as a two-step process. First, an assessment would be made as to whether the intermediary meets all of the criteria described in the **Federal Register**. The second step, undertaken only if the criteria as described in the **Federal Register** were met, would consist of measuring the intermediary's performance using statistical standards which would also be published in the **Federal Register**. The use of criteria and standards were intended to be separate and distinct evaluations. The review of statistical standards only occurred after the successful completion of the assessment criteria.

The statistical standards for intermediaries were first used for the Federal FY 1989 evaluation period. Due to the efforts of the intermediary community and HCFA, these standards have been refined and updated for each subsequent fiscal year evaluation period. It became apparent that in order to keep our regulations relating to statistical standards current it would be necessary to amend them frequently. Changes in the Medicare law and in evaluation procedures, as well as changing emphases in the importance of evaluating the various areas of performance, made existing standards out-of-date. In Federal FY 1983, § 421.122 was amended to replace the specific standards with a general explanation of the areas evaluated by the performance standards. Beginning with Federal FY 1984, we published a general notice with comment period on the performance criteria and standards for intermediaries that served the same purpose as would be achieved if we amended the regulations on an annual basis. For consistency, and to comply with the requirements of section 1842(b) of the Act, we published similar items relating to carriers in the same notice.

After careful study and based on actual program experience, we retained the broad concept of the term "criteria" to measure the primary functional responsibilities of each intermediary and carrier, but found the term "standard" was better applied as a measurement of specific activities within each criterion, including activities measurable using statistical reports. Therefore, in practice, "standards" were used to measure a contractor's compliance with the requirements of "criteria".

We make revisions to the criteria and standards, including the assigned performance requirements, for each evaluation period to reflect changes in legislation or shifting program emphasis. We develop the performance criteria and standards from management studies conducted by HCFA and information supplied by intermediaries and carriers. We also consult with intermediary and carrier advisory groups which provide additional data and expertise. The contractor advisory groups furnish us with detailed explanations of the intricacies of their

internal operations so that the criteria and standards reflect functions actually performed. After these consultations, and after the criteria and standards have been published in the **Federal Register**, we issue detailed guidelines to all intermediaries and carriers through our manual issuances system. (Manual issuances are available to the public from HCFA central office and regional office on request.)

IV. Changes in the Regulations

As a result of program experience over several years, the provisions included in § 421.122 no longer accurately reflect the role of standards in what we believe is a well-functioning evaluation process. (The related requirements in § 421.120, on the other hand, continue to define the intermediary performance criteria in accurate and acceptable language.) We are, therefore, proposing to revise § 421.122 as described below.

A. Statistical Standards

As noted earlier, over time, the reliance on statistical standards diminished and standards now, in fact, measure the performance of specific activities in a defined criterion. In addition, certain functions that were included in the original evaluation structure have been transferred to more appropriate review activities. For example, the analysis which adjusted the cost standards for inflation and productivity has been incorporated into the budget development process rather than the criteria and standards development process. Finally, measurement and evaluation of criteria and standards have evolved into a one step process.

Criteria continue to consist of the general administration, fiscal management, beneficiary service, bill processing, provider reimbursement and utilization review functional responsibilities with the addition of several functions such as audit, fraud and abuse and expanded payment safeguards. We are, therefore, amending §§ 421.3, 421.112(b), 421.118(b), and 421.122 to delete reference to "statistical" standards and to replace the general explanation of the areas evaluated formerly by statistical standards with a general explanation of the areas evaluated by performance standards.

B. Carrier Requirements

Also as noted earlier, section 1816(f)(1) of the Act requires the Secretary to establish standards and criteria for the efficient performance of intermediary contract obligations. Section 1842(b)(2)(A) of the Act includes similar language for the establishment of standards and criteria for the performance of carrier obligations. However, our regulations do not contain requirements relating to measurement of carrier performance that are parallel to those for intermediaries. For consistency, we would establish a new § 421.201, Performance criteria and standards, that would measure the criteria and evaluate carrier performance of functional responsibilities such as accurate and timely processing of claims, responsiveness to beneficiary, physician and supplier concerns, and proper management of administrative funds.

HCFA will base the performance criteria and standards on the experience of the carriers nationwide, changes in carrier operations due to fiscal constraints, and HCFA's objectives in achieving better performance. Before the beginning of each evaluation period, HCFA will publish the performance criteria and standards as a notice in the **Federal Register**.

Finally we would add comparable language at § 421.201 to explain the areas evaluated by both performance criteria and standards for carriers, as required in section 2326(c) of the Deficit Reduction Act of 1984 (Pub. L. 98–369). We are also adding a section (§ 421.203) that explains the adverse action that may be taken by the Secretary if the carrier fails to meet the criteria and standards specified in § 421.201. Section 421.203 does not add or change carrier obligations. This new section merely creates a regulation for carriers to reflect a provision that has been in effect since Public Law 98–369 was enacted.

C. Adverse Contract Action

As written, § 421.5(d) provides the basis for the Secretary to not renew a contract at the end of its term, notwithstanding a contractor's performance results considered under section 1816(f) and 1842(b)(2) of the Act. We propose to add language to § 421.124, and include the same language in § 421.203, to grant explicit authority to take non-renewal action against contractors for reasons other than evaluation ratings; i.e., excessively high costs.

V. Impact Analyses

A. Regulatory Impact Statement

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

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These regulations are intended to improve an evaluation system already in place. No changes in costs or savings are expected to be realized by the Federal Government or the Intermediaries and carriers. Therefore, we have determined that this rule does not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. Because we have determined that this rule is not a major rule, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that these regulations will not have a significant economic impact on a substantial number of small businesses, organizations or government jurisdictions. The changes to the existing regulations do not add to or alter the functions that intermediaries or carriers already perform for the Medicare program and, therefore, will not increase the cost of an intermediary's or carrier's Medicare operation. For this reason, regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

This notice contains no information collection requirements subject to Office of Management and Budget approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subject in 42 CFR Part 421

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

42 CFR part 421 would be amended as set forth below:

PART 421—INTERMEDIARIES AND CARRIERS

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

Authority: Secs. 1102, 1815, 1816, 1833, 1834 (a) and (h), 1842, 1861(u), 1871, 1974 and 1875 of the Social Security Act (42

U.S.C. 1302, 1395g, 1395h, 1395l, 1395m (a) and (h), 1395u, 1395x(u), 1395hh, 1395kk, and 1395ll), and 42 U.S.C. 1395b–1.

Subpart A—Scope, Definitions, and General Provisions

2. Section 421.3 is revised to read as follows:

§ 421.3 Definitions.

Intermediary means an entity that has a contract with HCFA to determine and make Medicare payments for Part A or Part B benefits payable on a cost basis and to perform other related functions. For purposes of designating regional or alternative regional intermediaries for home health agencies and of designating intermediaries for hospices under § 421.117 as well for applying the performance criteria in § 421.120 and the performance standards in § 421.122 and any adverse action resulting from such application, the term intermediary also means a Blue Cross Plan which has entered into a subcontract approved by HCFA with the Blue Cross and Blue Shield Association to perform intermediary functions.

Subpart B—Intermediaries

§ 421.112 [Amended]

3. In § 421.112(b), "statistical standards" is replaced by "performance standards".

§ 421.118 [Amended]

4. In § 421.118(b) "statistical standards" is replaced with "performance standards".

5. Section 421.122 is revised to read as follows:

§ 421.122 Performance standards.

(a) *Development of standards.* In addition to the performance criteria (§ 421.120), HCFA will develop detailed performance standards for use in evaluating intermediary performance which may be based on historical performance, application of acceptable statistical measures of variation to nationwide intermediary experience during a base period, and/or changing program emphases or requirements. These standards will also be developed considering intermediary experience and will evaluate the specific requirements of each functional responsibility or criterion.

(b) *Factors beyond intermediary's control.* To identify measurable factors that significantly affect an intermediary's performance, but that are not within the intermediary's control, HCFA will—

(1) Study the performance of intermediaries during the base period; and

(2) Consider the noncontrollable factors in developing performance standards.

(c) *Publication of standards.* The development and revision of standards for evaluating intermediary performance is a continuing process. Therefore, before the beginning of each evaluation period, which usually coincides with the Federal fiscal year period of October 1–September 30, HCFA will publish the performance standards as part of the **Federal Register** notice describing the performance criteria issued under § 421.120(c). HCFA may not necessarily publish the criteria and standards every year. HCFA has interpreted the statutory phrase "before the beginning of each evaluation period" as allowing publication of the criteria and standards after the Federal fiscal year begins, as long as the evaluation period of the intermediaries for the new criteria and standards begins after the publication of the notice.

6. Section 421.124 is revised to read as follows:

§ 421.124 Intermediary's failure to perform efficiently and effectively.

(a) Failure by an intermediary to meet, or to demonstrate the capacity to meet, the criteria or standards specified in §§ 421.120 and 421.122 may be grounds for adverse action by the Secretary or by HCFA, such as reassignment of providers, offer of a short-term agreement, termination of a contract, or non-renewal of a contract. If an intermediary meets all criteria and standards in its overall performance, but does not meet them with respect to a specific provider or class of providers, HCFA may reassign that provider or class of providers to another intermediary in accordance with § 421.114.

(b) In addition, notwithstanding whether an intermediary meets the criteria and standards, if the cost incurred by the intermediary to meet its contractual requirements exceeds the amount which the Secretary finds to be reasonable and adequate to meet the cost which must be incurred by an efficiently and economically operated intermediary, such high costs may also be grounds for adverse action.

Subpart C—Carriers

7. In subpart C a new § 421.201 is added to read as follows:

§ 421.201 Performance criteria and standards.

(a) *Application of performance criteria and standards.* As part of the carrier evaluations mandated by section 1842(b)(2) of the Act, HCFA periodically assesses the performance of carriers in their Medicare operations using performance criteria and standards.

(1) The criteria measure and evaluate carrier performance of functional responsibilities such as—

(i) Accurate and timely payment determinations;

(ii) Responsiveness to beneficiary, physician, and supplier concerns; and

(iii) Proper management of administrative funds.

(2) The standards evaluate the specific requirements of each functional responsibility or criterion.

(b) *Basis for criteria and standards.* HCFA will base the performance criteria and standards on—

(1) Nationwide carrier experience;

(2) Changes in carrier operations due to fiscal constraints; and

(3) HCFA's objectives in achieving better performance.

(c) *Publication of criteria and standards.* Before the beginning of each evaluation period, which usually coincides with the Federal fiscal year period of October 1–September 30, HCFA will publish the performance criteria and standards as a notice in the **Federal Register**. HCFA may not necessarily publish the criteria and standards every year. HCFA has interpreted the statutory phrase "before the beginning of each evaluation period" as allowing publication of the criteria and standards after the Federal fiscal year begins, as long as the evaluation period of the carriers for the new criteria and standards begins after the publication of the notice.

8. A new § 421.203 is added to read as follows:

§ 421.203 Carrier's failure to perform efficiently and effectively.

(a) Failure by a carrier to meet, or demonstrate the capacity to meet, the criteria and standards specified in § 421.201 may be grounds for adverse action by the Secretary, such as contract termination or non-renewal.

(b) Notwithstanding whether or not a carrier meets the criteria and standards specified in § 421.201, if the carrier's cost incurred to perform its contractual requirements exceeds that amount which the Secretary finds to be reasonable and adequate to meet the cost which must be incurred by an efficiently and economically operated carrier, such high costs may be grounds for adverse action.

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

Dated: February 2, 1992.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: March 20, 1992.

Louis W. Sullivan,

Secretary.

Note: This document was received at the Office of the Federal Register on November 25, 1992.

[FR Doc. 92–29179 Filed 12–2–92; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 28

[CGD 88–079a]

RIN 2115–AD12

Commercial Fishing Industry Vessel Regulations

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking; correction.

SUMMARY: This document corrects two errors that appeared in the supplemental notice of proposed rulemaking published October 27, 1992 in the **Federal Register** (57 FR 48670) concerning regulations to implement provisions of the Commercial Fishing Industry Vessel Safety Act of 1988. The first error occurred in the summary section which included a reference to the Boundary Line which might mislead readers as to the scope of the proposed regulations. The other error involved the use of a misnumbered reference which might confuse the reader concerning the paragraph on which the Coast Guard was requesting comments.

DATES: Comments on the SNPRM must be received on or before December 28, 1992.

FOR FURTHER INFORMATION CONTACT: LCDR Tim Skuby, Merchant Vessel Inspection and Documentation Division, Fishing Vessel/Offshore Activities Branch (G–MVI–4), room 1405, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, Phone (202) 267–2307.

SUPPLEMENTARY INFORMATION: The SNPRM was published on October 27, 1992 and invited the public to comment on it through December 28, 1992. The last sentence of the first paragraph on page 48670 contains the words "and outside the Boundary Line". These words could mislead a reader as to the limit of the proposed rule's scope. In the first column on page 48675, the reference to "B.3" in the first sentence of the fourth paragraph was in error. The correct reference should have been to "2.c". Due to these discrepancies, the Coast Guard is publishing this correction document.

CORRECTIONS: On page 48670, 1st column, 1st paragraph, line 16, delete the phrase "and outside the Boundary Line" so the sentence reads "These topics include: Stability for fishing vessels less than 79 feet in length; requirements for survival craft on fishing vessels carrying less than four individuals on board, operating within 12 miles of the Coastline; and administration of exemptions authorized by 46 U.S.C. 4506 in relationship to high vessel density and limited duration fisheries".

On page 48675, 1st column, 4th paragraph, line 3, replace "B.3" with "2.c" so the sentence reads "Should any other organizations be explicitly recognized as certificating individuals as instructors under item 2.c above?"

Dated: November 20, 1992.

R.C. North,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–29231 Filed 12–2–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 921192–2292]

Reef Fish Fishery of the Gulf of Mexico

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

ACTION: Proposed rule.

SUMMARY: NMFS issues a preliminary notice of change in the commercial quota for red snapper in the Gulf of Mexico reef fish fishery in accordance with the framework procedure of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This notice proposes an increase in the annual commercial quota for red snapper from 2.04 to 3.06 million pounds (0.93 to 1.39 million kg). The intended effect is to protect the red snapper resource from overfishing and continue the stock rebuilding program while still allowing catches in the commercial and recreational fisheries for red snapper.

DATES: Written comments must be received on or before December 17, 1992.

ADDRESSES: Comments on the proposed rule should be sent to Robert A. Sadler, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702. Copies of documents supporting this action, including the Environmental Assessment and Regulatory Impact Review, may be obtained from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813–893–3161.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP, prepared and amended by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR part 641, under the authority of the Magnuson Fishery Conservation and Management Act.

Based on the 1992 stock assessment for red snapper, and recommendations from the Council's Stock Assessment and Socioeconomic Panels, the Council has proposed for red snapper an increase in the total allowable catch (TAC) from 4.0 to 6.0 million pounds (1.8 to 2.7 million kg) and a change in the target date for achieving a 20 percent spawning potential ratio from January 1, 2007, to January 1, 2009. TAC and target dates are among the management measures that may be changed under the framework procedures of the FMP, as amended.

Under the established commercial/recreational allocation ratio of 51/49, a TAC of 6.0 million pounds (2.7 million kg) would provide a commercial quota of 3.06 million pounds (1.39 million kg), upon attainment of which the commercial fishery would be closed, and a recreational allocation of 2.94 million pounds (1.33 million kg), which would equate to a daily recreational bag limit of 7 fish, which is the current bag limit.

The Council concluded that (1) an increase in the TAC is necessary to alleviate the negative social and economic impacts on fishery participants that have resulted from the low quotas imposed by the Council for the last 3 years; and (2) the TAC can be increased to 6.0 million pounds (2.7 million kg) and still be consistent with the rebuilding program specified in the FMP (the rebuilding program assumes a 50-percent reduction of red snapper in shrimp trawl bycatch in 1994). The increased commercial quota under the proposed increased TAC, in combination with vessel trip limits for red snapper that are being implemented under an emergency interim rule, would alleviate the derby fishery, market glut,

and depressed exvessel prices that characterized the fishery in 1992, when the quota was taken in just 53 days. The increased commercial quota, combined with commercial vessel trip limits, would maintain the existing structure of the directed fishery for red snapper and the associated secondary industries in coastal communities. The increased TAC is at the upper limit but within the range of acceptable biological catch established by the Council's Stock Assessment Panel, and the revised target date for rebuilding the red snapper resource is within the target period specified in the FMP. The Council will continue to monitor the status of the resource through review of annual stock assessments and trends in the red snapper recruitment index to ensure that the goal of a 20 percent spawning potential ratio is achieved by the revised target date.

Accordingly, NMFS proposes to increase the annual commercial quota for red snapper to 3.06 million pounds (1.39 million kg) and to approve the increased TAC and revised target date, as authorized by 50 CFR 641.28.

Classification

The Assistant Administrator for Fisheries, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291 because the total impact is well under the threshold level of $100 million used as a guideline for a "major rule."

The Council prepared a regulatory impact review (RIR) on this action. The conclusions of the RIR are summarized as follows: Theoretically, this action should result in an increase in the short-term benefits to both commercial and recreational sectors of the red snapper fishery. However, when compared with the projected harvest for 1992, the increased TAC would not substantially affect the amount of harvest from either sector, although the distribution of benefits and costs may change. The long-term impacts are positive. A copy of the RIR is available (see **ADDRESSES**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because, as noted above in the summary of regulatory impacts, the 1993 harvest would not differ substantially from the 1992 harvest. Accordingly, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 27, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is proposed to be amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

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

2. In § 641.25, paragraph (a) is revised to read as follows:

§ 641.25 Commercial quotas.

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(a) Red snapper—3.06 million pounds (1.39 million kg).

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[FR Doc. 92–29272 Filed 12–2–92; 8:45 am]

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50 CFR Parts 672, 675, and 676

[Docket No. 921114–2314]

RIN 0648–AD19

Pacific Halibut Fisheries; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands; Limited Access Management of Fisheries Off Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would allocate fishing privileges for Pacific halibut in and off of Alaska, and would implement proposed Amendment 15 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) area and proposed Amendment 20 to the FMP for Groundfish of the Gulf of Alaska (GOA). Final action on this proposed rule and the FMP amendments will be decided by the Secretary of Commerce (Secretary) after review and consideration of public comments.

These regulations are proposed to allocate future total catch quotas of Pacific halibut and sablefish among individual fishermen. Each quota share (QS) would represent a transferable harvest privilege, within specified limitations, and could be converted annually into an individual fishing quota (IFQ). Only fishermen granted IFQs would be authorized to harvest, within specified limitations, halibut or sablefish whenever and however such harvests would be most beneficial to their commercial fishing operation.

These actions are intended by the Council to promote the conservation and management of halibut and sablefish resources, and to further the objectives of the Halibut Act and the Magnuson Act that provide authority for governing these fisheries.

DATES: Comments must be received at the following address no later than January 11, 1993.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 9109 Mendenhall Road, suite 6, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of proposed Amendments 15 and 20, and the final environmental impact statement/supplemental environmental impact statement (FEIS/SEIS) for halibut and sablefish IFQ programs, respectively, may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter, Fishery Management Biologist, Alaska Region, NMFS at 907–586–7228.

SUPPLEMENTARY INFORMATION: The proposed halibut regulatory action and Amendments 15 and 20 to the respective FMPs were prepared by the North Pacific Fishery Management Council (Council) and have been submitted to the Secretary for review under provisions of the Northern Pacific Halibut Act (Halibut Act) and the Magnuson Fishery Conservation and Management Act (Magnuson Act).

These regulations are proposed to allocate future total catch quotas of Pacific halibut and sablefish among individual fishermen. Each quota share (QS) would represent a transferable harvest privilege, within specified limitations, and could be converted annually into an individual fishing quota (IFQ). Fishermen granted IFQs would be authorized to harvest, within specified limitations, halibut or sablefish whenever and however such harvests would be most beneficial to their commercial fishing operation. The proposed IFQ program would limit the entry of future fishermen into the affected fisheries to those persons willing to purchase the harvest privilege from a person who already possesses the privilege. The IFQ program is intended to resolve various conservation and management problems that stem from the current "open access' regulatory regime, which allows free access to the common property fishery resources and has resulted in excess capital

investment in the fisheries. If implemented, the proposed IFQ program would apply only to the fixed gear fisheries for halibut in and off of Alaska and sablefish off Alaska.

In addition, a Western Alaska Community Development Quota (CDQ) is proposed to help develop commercial fisheries in communities on the Bering Sea cost by allowing them exclusive access to specified amounts of halibut and sablefish in the BSAI area.

The Alaskan fisheries for Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) and the affected human environment are described in the FEIS/SEIS and in the FMPs. Draft Regulatory impact reviews, initial regulatory flexibility analyses, and fishery impact statements that assess the potential economic and social effects of the proposed actions are incorporated in the FEIS/SEIS document.

Management Authority

The domestic fishery for halibut in and off of Alaska is managed by the International Pacific Halibut Commission (IPHC) as provided by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention), signed at Washington on March 29, 1979, and the Northern Pacific Halibut Act of 1982. While the IPHC has primary authority for managing the halibut resource for biological conservation purposes, the Halibut Act authorizes the appropriate Regional Fishery Management Councils established by the Magnuson Act to develop regulations that are in addition to, but not in conflict with, regulations adopted by the IPHC affecting the U.S. halibut fishery. Under this authority, the Council may develop, for approval by the Secretary, limited access policies for the Pacific halibut fishery in Convention waters in and off of the State of Alaska that are consistent with criteria set forth in section 303(b)(6) of the Magnuson Act. "Convention waters" means the maritime areas off the west coast of the United States and Canada (Pub. L. 97–176). Therefore, the Council has authority to recommend policies affecting halibut resource allocation among U.S. fishermen in the maritime internal and coastal waters of Alaska and in the ocean waters over which the United States exercises fishery management jurisdiction. The Council does not have an FMP for halibut.

Domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed in accordance with the BSAI and GOA FMPs. Both FMPs were prepared by the Council under authority of the Magnuson Act. The BSAI FMP is implemented by regulations appearing at 50 CFR 611.93 for the foreign fishery and 50 CFR part 675 for the U.S. fishery. The GOA FMP is implemented by regulations appearing at 50 CFR 611.92 for the foreign fishery and at 50 CFR part 672 for the U.S. fishery. General regulations that also pertain to the U.S. groundfish fisheries appear at 50 CFR part 620.

The Council is authorized by the Magnuson Act to establish a system for limiting access to a fishery in order to achieve optimum yield if, in developing such a system, the Council and Secretary take into account: (1) Present participation in the fishery; (2) historical fishing practices in, and dependence on, the fishery; (3) the economics of the fishery; (4) the capability of fishing vessels used in the fishery to engage in other fisheries; (5) the cultural and social framework relevant to the fishery; and (6) any other relevant considerations (16 U.S.C. 1853(b)). The Council's and the Secretary's authority to allocate fishing privileges also is governed by national standard 4 of the Magnuson Act (16 U.S.C. 1851). This standard stipulates that if it becomes necessary to allocate or assign fishing privileges among U.S. fishermen, such allocation shall be: (1) Fair and equitable to all such fishermen; (2) reasonably calculated to promote conservation; and (3) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

Background

On December 8, 1991, the Council recommended an IFQ program for management of the fixed gear sablefish and halibut fisheries in and off of Alaska. The Council's recommendation was the product of more than 3 years of analysis of the IFQ form of management as an alternative to the current open access system. Discussion of this form of management had been ongoing since the early 1980s. The decision to recommend an IFQ management alternative was based, in part, on a series of analyses of this and other management alternatives prepared by the Council. These analyses include: (1) An SEIS, dated November 16, 1989, which analyzed three alternatives to continued open access in the fixed gear sablefish fishery off Alaska (license limitation, annual fishing allotments, and IFQs); (2) a supplement to the SEIS, dated May 23, 1990, which analyzed more specific IFQ alternatives for the sablefish fishery; (3) a revised supplement to the SEIS, dated May 13, 1991, which replaced the May 23, 1990, supplement and further analyzed specific IFQ alternatives for the sablefish fishery; and (4) an EIS, dated July 19, 1991, which analyzed various IFQ alternatives for management of the halibut fishery in and off of Alaska.

Although the Council decided on its preferred IFQ alternative at its meeting in December 1991, it decided not to submit the proposed amendments for Secretarial review until an additional analysis was completed and made available to the public and the Council prior to its April 1992 meeting. This additional analysis, which examined the potential impacts of the specific provisions of the combined sablefish/halibut IFQ program, was made available to the public and Council on March 27, 1992, 3 weeks prior to the Council's April meeting. At that meeting, the Council received additional public testimony on the analysis and on the IFQ proposal in general. A motion to rescind the December 1991 action to recommend the IFQ program failed. The March 27, 1992, analysis was published, following the April meeting, for an additional 45-day public comment period under the National Environmental Policy Act (NEPA) (57 FR 20826, May 15, 1992). This public review period ended on June 29, 1992, and comments received on the document are addressed in the FEIS/SEIS that has been submitted to the Secretary for review. The entire FEIS/SEIS is comprised of the original November 16, 1989, analysis as supplemented by the May 13, 1991, July 19, 1991, and March 27, 1992 analyses. Any part or all of the FEIS/SEIS is available from the Council (see **ADDRESSES**).

The Council has discussed limited entry options for various fisheries under its purview since the late 1970s. For example, a moratorium on entry into the Alaska halibut fishery was recommended to the Secretary by the Council in 1983. The halibut moratorium was recommended in response to progressively shorter seasons and other management problems associated with fishermen racing to harvest as much fish as possible before the catch limit is reached and the fishery closed. Such fishing behavior is symptomatic of excessive fishing effort and capital in a fishery. The 1983 halibut moratorium was disapproved by the Secretary, however, because it would not have substantially resolved the basic problem of overcapitalization in the halibut fishery.

Council consideration of limited access management for the sablefish fishery began in 1985. Driven by the increased market value of sablefish, this fishery was rapidly evolving into a race for fish similar to the halibut fishery. As a result of gear conflicts in the GOA sablefish fishery, the Council decided to recommend Amendment 14 to the GOA FMP, which allocated sablefish among gear types. In approving Amendment 14 in 1985, the Director, Alaska Region, NMFS (Regional Director), noted that NMFS was convinced that the rapid increase in fishing effort in the sablefish fishery was likely to continue. The Regional Director recommended that the Council begin immediately to address the problem by developing additional controls on fishing effort, including those that limit access to the sablefish resource. The Council responded by requesting the Secretary to publish a notice announcing a control date, after which anyone entering the sablefish fishery would not be assured of future participation if a limited access program were implemented. The published control date was September 26, 1985 (51 FR 5393, February 13, 1986).

The Council began exploring alternatives to open access by soliciting the views of the fishing industry. At its meeting in September 1987, the Council adopted a statement of intent that committed the Council to "develop strategies for license limitation or the use of individual transferable quotas in the sablefish fixed gear fishery." Public workshops were sponsored by the Council in early 1988 to gather public comments and to develop further feasible options to the current management regime. In December 1988, the Council decided that the status quo (open access) was unacceptable for the fixed gear sablefish fishery and expressed a desire to explore the options of license limitation and IFQs. In January 1989, the Council expanded its consideration of limited access alternatives to include all gear types fishing for all groundfish, crabs in the BSAI, and halibut in and off of Alaska. The public was notified of the Council's intent to prepare an SEIS for this purpose, and scoping comments were invited through April 30, 1989 (54 FR 7814, February 23, 1989; 54 FR 8230, February 27, 1989).

In November 1989, the Council prepared a draft SEIS that analyzed four options for future management of the sablefish fisheries off Alaska: (1) Continued open access, (2) license limitation, (3) IFQs, and (4) a combination system called annual fishing allotments (AFAs). The Council also identified 10 problems in the sablefish fishery that the management alternatives were expected to address. These included allocation conflicts, gear conflict, deadloss from lost gear, bycatch loss, discard mortality, excess harvesting capacity, product wholesomeness, safety, economic stability in the fisheries and fishing communities, and rural coastal community development of a small boat fleet.

Based on this draft SEIS, the Council decided that license limitation and AFAs were not viable alternatives to solve the problems facing the sablefish fixed gear fisheries. The Council discussed AFAs but determined that, because this alternative combined open access and a form of IFQs, it would result in a more complicated management program than either program alone and would not eliminate the problems associated with open access management. The Council discussion on license limitation concluded that a reduction in fleet size would be necessary to alleviate temporarily the problems in the sablefish fishery. It was apparent to the Council that such a reduction might not be achievable in an equitable manner. Moreover, the Council understood that a reduction in the number of vessels could be offset by an increase in the fishing power of each vessel, which would not substantially change the race for fish as the mechanism for allocating the total allowable catch (TAC) for the fixed gear sablefish fishery among competing fishermen. It is this race for fish that gives rise to many other problems in the fishery as discussed in the November 16, 1989, draft SEIS. Therefore, at its meeting in January 1990, the Council proceeded to refine its consideration of IFQ alternatives and conduct a more thorough analysis of these alternatives.

In April 1990, the Council reviewed a supplement to the draft SEIS, which compared specific IFQ programs to the open access alternative, and released the May 23, 1990, supplement to the SEIS for public review and comment. The Council discussed the IFQ alternatives at its meeting in August 1990, without reaching a consensus, and the IFQ issue was tabled until January 1991.

At its meeting in January 1991, the Council decided to consider two new IFQ alternatives. The resulting analysis revised and replaced the May 23, 1990, supplement and was made available for public comment on May 13, 1991. The four IFQ systems assessed in this analysis included a range of alternatives in terms of qualification periods, transferability restrictions, ownership limits, community development quotas, and other features. In addition, the Council decided to consider similar alternative IFQ systems for the halibut fishery in and off of Alaska with the intent that a single IFQ program would apply to both fisheries. Hence, the Council also prepared an EIS for a halibut IFQ program in early 1991. The EIS for halibut IFQs was dated July 19, 1991, and released for a 45-day NEPA public review and comment period on August 2, 1991 (56 FR 37094).

At its meeting in September 1991, the Council provisionally recommended an IFQ management alternative for both fisheries. The Council recognized that differences existed between the two IFQ systems for halibut and sablefish fisheries and intended for them to be integrated. The Council also established an IFQ Implementation Team (Team) comprised of staff from State and Federal agencies and representatives from affected industry groups. The Team reviewed the Council's preferred IFQ for practical implementation difficulties, and prepared a draft implementation plan for Council and public review prior to final Council action at its meeting in December 1991. The draft implementation plan included descriptions of initial and annual allocation systems, enforcement and monitoring programs, and an estimated implementation budget. The plan was made available for public review, and a public hearing was held prior to the start of the December Council meeting. After receiving additional public comment and recommendations of the Implementation Team, the Council, on December 8, 1991, approved the halibut and sablefish fixed gear fishery IFQ alternative, which is the subject of this proposed rule.

Council staff prepared an additional supplement to the draft EIS/SEIS after the Council, at its meeting in January 1992, requested additional analysis of the potential effects of the preferred IFQ alternative for the halibut and sablefish fixed gear fisheries. This additional supplemental analysis was made available to the public on March 27, 1992. At its meeting in April 1992, the Council received additional public comment on the proposed IFQ program and the March 27, 1992, analysis, and reconfirmed its original decision to recommend the halibut and sablefish IFQ program to the Secretary. A 45-day NEPA public comment period on the draft EIS/SEIS was announced on May 15, 1992 (57 FR 20826).

The Regional Director made a preliminary evaluation of all documents relevant to the Council's IFQ recommendation and determined that they were sufficient in scope and

substance to warrant public and Secretarial review. The official "receipt date" of the Council's IFQ program recommendation is October 26, 1992. A notice of availability of the FMP amendment was published on November 3, 1992 (57 FR 49676).

Description of Proposed Management Measures

If approved by the Secretary, the proposed IFQ program for Alaskan halibut and sablefish fisheries would be implemented by changes in existing parts 672 and 675, and by a new part 676 in Title 50 of the Code of Federal Regulations (CFR). The new part to the CFR is proposed to simplify the potential implementation of limited access management regulations that would otherwise effect repetitive changes in two or more existing parts. Subpart A of proposed part 676 is reserved for regulations that would implement a moratorium on the entry of new fishing vessels into all of the fisheries under the Council's purview (except salmon). The Council approved this moratorium for Secretarial review on June 24, 1992. Proposed implementing regulations for the moratorium will be forthcoming. A description of the basic IFQ management measures being proposed, and their rationale, follows.

Definitions of Terms Specific to the IFQ Program

The proposed IFQ program would introduce several new terms defined at § 676.11. Some of these terms are similar to, but not exactly the same as, those used in 50 CFR parts 672 and 675. For example, the proposed term "catcher vessel" is identical to the existing term in parts 672 and 675 except that "fish" is substituted for "groundfish" in the proposed term. This is necessary to include halibut, which is not a "groundfish" as defined in existing regulations. Also, the proposed term "freezer vessel" is similar to the existing definition for "processor vessel." The key difference is that the proposed definition is based on the performance of a vessel during any fishing year while the existing definition is based on the capability of a vessel during the year for which it has been issued a Federal groundfish permit. This distinction was important to the Council because it wanted to allow a vessel that has the capability to freeze fish to land its catch of halibut or sablefish using catcher vessel IFQ (i.e., vessel categories B, C, or D as defined at proposed § 676.10(a)(2)).

One feature of the proposed IFQ program is that fishing privileges would be allocated based on a person's catch history and characteristics of the harvesting vessel. The proposed term "person" is defined as either an individual or a corporation, partnership, association, or other entity. Any "individual" person must be a citizen of the United States and not a corporation, partnership, association, or other entity. A corporate "person" may be any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any state) that is a U.S. citizen. The proposed definition would serve the Council's intention of minimizing the accumulation of fishing privileges by foreign entities.

The proposed allocations would apply only to the fixed gear fisheries for sablefish and halibut. The term "fixed" gear" would include all pot gear and all hook-and-line gear including longline, handline, jig, or troll gear. Use of IFQs would still be subject to restrictions on gear types specified in parts 301, 672, and 675. For example, sablefish IFQ could not be used for sablefish caught with pot gear in the GOA because this gear type currently is prohibited in this area for catching sablefish. Likewise, halibut IFQ could not be used for halibut caught in pot gear anywhere because current IPHC regulations prohibit using any gear other than hook-and-line gear (50 CFR 301.16). The other most common type of fishing gear used in the groundfish fisheries, trawl gear, was explicitly excluded from the IFQ program for simplicity.

The essence of the proposed management program is the distribution of a share of the total catch quota of halibut and sablefish to qualified persons. This QS or "quota share" would be a person's total fixed gear landings (in pounds, by species, vessel category, and area) of halibut in the best 5 out of 7 years (1984–1990), and of sablefish in the best 5 out of 6 years (1985–1990). This qualifying poundage of halibut or sablefish would be calculated for each of these species which that person harvested during the qualifying period 1988–1990. The purpose of the QS is to serve as the basis for calculating each qualified person's IFQ for any one year, and the term "quota share" is defined as such in the proposed rule. This definition would implement the intended policy of the Council to consider past participation in the award of future harvest privileges. In short, fishermen with relatively high catch histories would receive a larger QS than fishermen with relatively low catch histories.

An IFQ or "individual fishing quota" is defined in the proposed rule as the annual catch limit of halibut or sablefish that may be harvested by a person who is lawfully allocated as harvest privilege for those species. In practice, it would be calculated annually based on the QS. The principal distinction between a QS and an IFQ is that the QS would be a fixed number that represents a person's qualifying pounds, while the IFQ would vary from year to year depending on the total amount of QSs held by all persons and the TAC. A QS would represent a perennial harvest privilege based on past participation in the fisheries, and an IFQ would represent the amount of fish that the IFQ holder is authorized to harvest in any one fishing year, based (in part) on the QS.

The proposed term "IFQ crew member" would include any individual who has at least 5 months' experience working as part of the harvesting crew in any U.S. commercial fishery, and any individual who receives an initial allocation of QS. This definition is pertinent to the transfer constraints at § 676.21. The Council's intention is to require any person who wishes to enter the halibut or sablefish fixed gear fishery in the catcher vessel fleet to be an "individual" and to have commercial fishing experience. The rationale for this measure is to assure that IFQs remain in the hands of fishermen who have a history of past participation and current dependence on the fishery. The Council also intends to use the IFQ program to foster professionalism in the affected fisheries, which would generally improve safety at sea. The Council considered this measure to be unnecessary for the freezer vessel fleet. The Council reasoned that most vessels in the freezer vessel fleet are corporate operations, unlike the more common owner/operator vessels in the catcher vessel fleet. Requiring new entrants to the freezer vessel fleet to be individuals would be excessively burdensome to the companies that own and operate freezer vessels and would ultimately change the character of the freezer vessel fleet. The Council has no intent to change the current character of either fleet.

Initial Allocation of QS

Basic QS Qualifications

The initial allocation of QS under the proposed IFQ program would be to persons who either owned or leased a fishing vessel that made legal landings of halibut or sablefish in any QS qualifying year. The QS qualifying years are proposed to be 1988, 1989, or 1990. Hence, the determination of whether a person is eligible for an initial allocation of QS would depend on passing three tests: (a) does the person satisfy the

definition of "person" in § 676.11; (b) did the person own or lease a vessel at any time during the QS qualifying years; and (c) did the vessel make legal landings of halibut or sablefish harvested with fixed gear at any time during the QS qualifying years while the vessel was owned or leased by the person? Any person that can document an affirmative response to each question would be qualified for an initial allocation of halibut or sablefish QS under the proposed management program.

The Council established the criterion of vessel ownership or lease for an initial allocation of QS because it determined that vessel owners or leaseholders were principally responsible for the financial risk in undertaking a commercial fishing venture.

The Council recognized that hired masters of fishing vessels and other crew members also are instrumental in the success of failure of a fishing venture, and that they do so at considerable personal and financial risk. However, hired masters and crew have substantially less capital investment in the fishery than vessel owners and leaseholders. One of the objectives of the proposed IFQ program is to reduce excess capitalization in the halibut and sablefish fixed gear fishery. Hence, allocation of QS only to vessel owners and leaseholders is reasonable because it is their decision whether to reduce or increase capital investment in harvesting capacity.

Legal landings of halibut or sablefish harvested with fixed gear had to occur at any time during the period of 1988 through 1990 to qualify for an initial allocation. For purposes of this program, a "legal landing" would mean the harvesting of these species with fixed gear in compliance with State and Federal regulations, including IPHC regulations, at the time of the landing. The Council's rationale for using these 3 years for qualification purposes is to allocate harvesting privileges to present participants in the fisheries. The Magnuson Act, at section 303(b)(6), requires the Council and the Secretary to take into account present participation in the fishery that is under consideration for limited access management. The Council reasoned that if a fixed gear vessel owner or leaseholder had not made legal landings of halibut or sablefish since the end of 1987, then that person is not likely to be currently active in these fisheries as a vessel owner or leaseholder. Additionally, NMFS notes that several years could elapse between 1990 and the first year of implementing the proposed IFQ program, if it is approved by the Secretary. The Council did not include 1991 or 1992 for qualification because it did not want to encourage speculative entry into these already overcrowded fisheries. Therefore, persons who entered the fixed gear fisheries for halibut and sablefish during these intervening years would not receive an initial allocation of QS.

Calculating Initial QS

If qualified for an initial allocation, the calculation of a person's initial QS would be based on that person's landing history over a broader range of years than the qualifying period. The initial QS of halibut would be based on a person's highest total landing of halibut for any 5 years of the 7-year base period 1984 through 1990. For sablefish, an initial QS would be based on the highest total landing of sablefish for any 5 years of the 6-year period 1985 through 1990. Each initial QS calculation would be specific to a regulatory area for which a catch limit of halibut or fixed gear sablefish is specified. The sum of all persons' halibut QSs and sablefish QSs for any regulatory area would be the respective halibut and sablefish QS pools for that area.

In developing this formula for determining initial QS, the Council intended to acknowledge long-term and consistent participation in the fisheries. Fishermen who produced relatively large catches consistently over the 6- or 7-years QS base period were intended to receive relatively large initial QSs; those whose catch histories showed less dependence on and participation in the fisheries were intended to receive relatively small QSs. However, this formula provides for discounting 1 (for sablefish) or 2 (for halibut) years of the lowest landings during the base period. The Council believes that this provision is necessary to discount the effects on a person's catch history of 1 or 2 years of relatively poor performance due to poor weather, injury, illness, the Exxon Valdez oil spill, or other unfortunate circumstance beyond the control of fishermen. The 2 years of lowest halibut catches would be discounted because the prevalence of small vessels in this fishery and extremely short fishing seasons subject halibut fishery participants to a greater risk of low catch history due to misfortune.

Vessel Categories

Each person eligible to receive QS would have it assigned to one of four vessel categories. The vessel categories would be based on the length of the vessel in which that person made fixed gear landings of groundfish or halibut in the most recent calendar year during the period 1985 through September 25, 1991, and the fish product type landed. The four vessel categories would be as follows:

Category "A"—freezer vessels of any length;

Category "B"—catcher vessels greater than 60 feet (18.3 meters) in length overall (LOA);

Category "C"—catcher vessels less than or equal to 60 feet (18.3 meters) LOA for sablefish, or catcher vessels greater than 35 feet (10.7 meters) but less than or equal to 60 feet (18.3 meters) for Pacific halibut; and

Category "D"—catcher vessels that are less than or equal to 35 feet (10.7 meters) LOA for Pacific halibut.

Initial QS would be assigned to vessel category "A," freezer vessels, if a person's most recent fixed gear landings of groundfish or halibut were caught by that vessel and processed on board. QS for groundfish or halibut caught by a catcher vessel and processed by a freezer vessel would be assigned to the owner or leaseholder of the catcher vessel. The term "processing" is defined in existing regulations at 50 CFR 672.2 and 675.2 to include (among other things) freezing, but does not include merely heading and gutting fish or holding them on ice. If no groundfish or halibut were processed on board a vessel during its most recent year of participation, then the QS would be assigned to one of the catcher vessel categories.

Initial halibut QS would be assigned to vessel category "D" if a person's most recent halibut landings were harvested in a catcher vessel that was less than or equal to 35 feet LOA. If sablefish also were harvested in the same vessel category, however, then that person's sablefish QS would be assigned to vessel category "C."

If a fisherman simultaneously owned (or leased) vessels in more than one vessel category that made fixed gear landings of halibut or sablefish during their most recent year of participation, then his QS of halibut or sablefish would be assigned to each category in proportion to the harvests of these species made in each category. Persons who qualify for halibut or sablefish QS in more than one vessel category but did not make any fixed gear landings of one or the other species in their most recent year of participation would be assigned QS for both species to each vessel category in proportion to harvests of groundfish made in each category. The assignment of QS among vessel

categories is illustrated in Figures 2a and 2b in section 5.0 of the FEIS/SEIS.

The purpose of these vessel categories is to ensure that the fixed gear fishing fleet under the IFQ program remains relatively diversified and similar to the current fleet structure. This purpose is fulfilled by prohibiting the transfer of QS between vessel categories. The Council, in recommending this measure, responded to substantial public concern that harvesting privileges without such restrictions would be transferred to owners of large vessels. Public concern was expressed that consolidation of QS in the hands of large vessel owners would potentially disenfranchise the small vessel fleet and cause social and economic damage to coastal communities in Alaska that rely, in part, on that fleet as a source of local revenues. Maintaining the social and cultural framework relevant to the fisheries, in large part represented by the small boat fisheries, was a primary goal of the Council from the beginning of IFQ discussions.

NMFS notes that vessel category restrictions could diminish theoretical gains in fleet efficiency and could limit the flexibility of vessel owners in the commercial fishing business. Such potential economic losses should be offset by social or other benefits. Public comment is invited on the efficacy of the proposed vessel categories, whether there should be fewer or more, and on the method of assigning QS to vessel categories.

Initial Allocation Procedure

If the IFQ program is approved by the Secretary, NMFS will begin the administrative work necessary to make initial allocations of QS and carry out the IFQ program. An IFQ implementation plan was requested by the Council and developed by an agency-industry work group (IFQ work group). This plan is included in the FEIS/SEIS as section 5.0. Figure 1 in the plan illustrates the initial allocation process as envisioned by the IFQ work group. A brief summary of this process follows.

1. A unified database of halibut and sablefish fixed gear landings and vessel ownership would be developed by NMFS based on a variety of State and Federal data files.

2. A QS application period of no less than 180 days would be announced by notice in the **Federal Register** and other appropriate information sources. The Regional Director would send a QS application form to any person requesting one during the application period. The IFQ work group estimated about 12,000 potential QS applicants.

3. If a QS application request is received from a person with vessel ownership and catch history in the NMFS unified database, then the application form sent to that person would be partially completed with those data to the extent confidentiality rules allow. For example, landings of halibut or sablefish made by someone on behalf of a vessel owner could not be revealed to the vessel owner unless the individual who made those landings signed a waiver that released those data to the vessel owner. In addition, persons who have leased vessels would have to supply the required evidence of such a lease (§ 676.20(a)(1)) before the catch history of the leaseholder could be accurately determined.

4. Completed QS applications received by the Regional Director before the end of the application period would be acknowledged. If an application is insufficiently documented, the applicant would be notified and have 90 days to submit corroborating documents. All applicants would have only one opportunity to revise, correct, or submit corroborating data in response to a notice from the Regional Director of insufficient documentation.

5. Applications with data uncontested by the Regional Director or another applicant would be approved by the Regional Director. The Regional Director would then calculate each applicant's halibut and sablefish QS for each relevant area and vessel category based only on data that are uncontested by the Regional Director or another applicant. Any data that are contested would not be used for calculating initial QS until discrepancies are resolved to the satisfaction of the Regional Director.

6. Each applicant would be informed of the initial QS calculated by the Regional Director, and the sum of all initial QS for any area would become the QS pool for that area. Applicants who wish to contest their initial QS or disapproval of their QS application must appeal the decision of the Regional Director within 90 days of the date of issuing the initial QS or of the date of denial of a resubmitted application.

This initial allocation process is designed to resolve data discrepancies involving catch and vessel ownership or lease history efficiently. The Secretary understands that all relevant data may not be in the NMFS unified database. Official landings data records may be in error. Information on vessel lease contracts would not normally be part of any State or Federal database. Applicants for QS would have to provide copies of the necessary documents to demonstrate such errors and lease contracts. After acceptance by the Regional Director of such documents, the NMFS database would be amended accordingly. In some cases, vessel owners would have to seek waivers to release catch data from fishermen who landed halibut or sablefish on behalf of, or while employed by, the vessel owner. Such fishermen could otherwise claim that they had a lease agreement with the vessel owner during the time they made the landings in question. However, if this were true, a would-be leaseholder also would have to produce acceptable documentation to support the claim. Arguments over catch history and vessel ownership or lease could continue for many years after the initiation of this process. Only uncontested data will be used to calculate each applicant's QS and the QS pool. The Secretary is particularly interested in public comment on this process and whether the proposed application time period is reasonable for completing the QS application and collecting any required documents to support the application.

Appeal of Initial Allocation

Details of the appeals process have not been fully developed. The Council intended limiting appeals to the issue of initial allocation of QS. For example, questions about the accuracy of catch data in the NMFS unified database or questions about vessel ownership or the existence of a vessel lease during the QS qualifying years could be appealed. The Council did not intend to involve the appeals process with, for example, questions about whether the IFQ program or the transferability of QS is good fishery management policy, or about enforcement and monitoring. However, the proposed limitations on use and transferability of QS and IFQ would require an ongoing administrative appeals process separate from that used to resolve enforcement cases.

Successful appeals of initial allocations would add QS to the QS pool of an area. An allocation of IFQ based on the revised QS of an appellant would be made only at the beginning of a fishing year when IFQ based on the QS pool is calculated.

Annual Allocation of IFQ

The maximum amount of halibut or sablefish that persons holding QS could harvest with fixed gear in any particular year, area, and vessel category (i.e., their IFQ) would be allocated annually to them by the Regional Director. The size of an IFQ for any area would depend on the amount of a person's QS, the size of the QS pool for that area, the size of the fixed gear TAC for that area, the amount

subtracted from the TAC for purposes of the CDQ program, and the amount of harvest over or under the IFQ allocated to the person in the previous year (see the proposed rule at § 676.20(f)). The annual IFQ allocation resulting from this calculation would be issued to each QS holder in the form of an IFQ permit after January 1 but prior to the start of the IFQ fishing season each year. Each IFQ permit would be specific for a year, area, and vessel category in addition to the maximum amount of either halibut or sablefish that may be harvested. The harvest limit specified on each IFQ permit would not change during the year for which it is issued except by approved transfer or by an emergency inseason adjustment of the fixed gear TAC, for example, to prevent overfishing as required by the Magnuson Act.

For purposes of annually calculating IFQ, the amount of any person's QS would be the amount held by that person as of noon, Alaska local time, on December 31 of the previous calendar year. Hence, the increase or decrease of a QS through approved transfers in 1995, for example, would not affect the IFQ based on that QS until 1996. Likewise, the QS pool for an area may increase or decrease during a year due to successful appeals or enforcement cases. However, the effect of any change in the QS pool on the amount of any person's IFQ would not be known until the following year.

The size of the fixed gear TAC will vary from year to year based on estimates of the halibut and sablefish biomass performed annually by IPHC and NMFS fishery biologists. The TAC of sablefish is apportioned between fixed gear and trawl gear in the BSAI and GOA management areas pursuant to §§ 672.24 and 675.24. Only the fixed gear portion of the TAC in both areas would be used for determining annual allocations of IFQs. The CDQ reserve proposed at § 676.25 also would be subtracted from the fixed gear TAC of halibut and sablefish in the annual calculation of IFQs.

Harvests of IFQ halibut or sablefish that exceed a person's IFQ would be considered an "IFQ overage." In addition to any penalties that may be assessed to QS holders for exceeding their IFQ, the Regional Director would deduct an amount equal to the overage from their IFQ in the year following determination of the overage. Likewise, unharvested amounts of IFQ that are less than 5 percent of the IFQ would be added to the allocation for the following year. This overage and underage provision is designed to address the difficulty of harvesting exactly the amount of fish listed on an IFQ permit. The IFQ work group expressed concern that fishermen would resolve overages by discarding some of their catch and highgrading before making an IFQ landing. The IFQ work group recommended that subtracting small amounts of overage (i.e., up to 5 percent of the IFQ) from future IFQ allocations would reduce the incentive to highgrade the catch because it would provide fishermen with more flexibility in harvesting the precise amount of their IFQ. The Secretary anticipates that small amounts of IFQ overage would not result in significant penalties beyond the loss of an equivalent amount of IFQ in future years and would not biologically harm the resource. However, the value of landed overages of 5 percent or more would be forfeited and penalties could be substantial. The allowance of adding underages to a following year's IFQ allocation is intended to provide equitable treatment to QS holders who do not harvest their full IFQ by amounts less than 5 percent of their IFQ.

Transfer Provisions

The ability to transfer harvesting privileges among fishermen is a critical element in any individual quota program. Transferability can provide a means of reducing overcapitalization in a fishing fleet with minimal government intervention, and also provide a means of entry into the fishery. Unconstrained transferability could lead to an excessive share of harvesting privileges being held by a single individual or corporation. Also, it could lead to localized overfishing and other biological conservation problems.

In developing the proposed IFQ program, the Council heard substantial public concern expressed about the potential for transferable QS to cause social and economic disruption in Alaskan coastal communities. However, other concerns were expressed that constrained transferability would hinder the flexibility and choices of fishermen, and prevent achievement of many of the Council's objectives. The Council's proposed program attempts to balance these concerns partly through restrictions on transferability and partly through QS ownership limits. The Secretary especially invites public comment on whether the proposed transfer provisions are appropriate to meet the Council's objectives or are too restrictive.

Basically, the proposed IFQ program would allow QS and accompanying IFQ to be transferred consistent with the following four constraints:

1. The person that would receive transferred QS must be a U.S. citizen and, if receiving catcher vessel QS, also must be an IFQ crew member;
2. QS and accompanying IFQ cannot be transferred between regulatory areas;
3. QS and accompanying IFQ cannot be transferred between any catcher vessel categories; and
4. The transfer of catcher vessel QS is not a lease in excess of 10 percent of a QS.

These transfer constraints would be implemented through a requirement for the Regional Director to approve all transfers before they are effective, except transfers due to operation of law. This requirement also would provide the Regional Director with a means of tracking QS holdings for purposes of annually allocating IFQ.

The citizenship requirement is intended to prevent the consolidation of QS by foreign entities. Foreign interests are provided for under the Magnuson Act and the two FMPs by apportioning the TAC of all species first to domestic annual processing (DAP), then to joint venture processing (JVP), and finally to direct fishing by foreign vessels. Hence, JVP and foreign apportionments of the TAC would be available only if amounts of the TAC are surplus to DAP. No amounts of sablefish TAC have been surplus to DAP since 1988 in the BSAI area and since the early 1980s in the GOA. In recent years, the TACs of all species have been apportioned to DAP. Foreign or JVP fishing for halibut has never been allowed since this fishery has been managed by the IPHC.

The Council's rationale for requiring persons who receive QS by transfer to be "IFQ crew members" is given above under the definition of terms.

The restriction on transferring QS or IFQ between areas is for biological conservation purposes. Stock assessments of halibut and sablefish are developed on an area-specific basis. Although fishery scientists currently understand that there is one stock of sablefish and one of halibut throughout their range off Alaska, excessive harvesting in any one area could cause localized depletion or overfishing. Defining management areas for such wide ranging species is a common tool used to distribute evenly the effects of fishing mortality and prevent localized depletion. Preventing the transfer of QS between areas would assure that this management measure remains effective.

The restriction on transferring QS or IFQ among vessel categories is explained above under the discussion of initial allocation of QS to vessel categories.

Considerable public concern was expressed in opposition to leasing QS, although some public comments voiced concern that restrictions on leasing would be impracticable. Those opposed to any provision for leasing prefer to have QS remain in the hands of practicing fishermen. Leasing opponents argue that fishing privileges may otherwise be purchased by absentee owners who would use the IFQ program only for investment purposes. Opposition also was expressed to the possibility of retired fishermen leasing all of their QS to receive "mail box" income. The view was expressed that such fishermen should sell their QS to entering fishermen or those who are willing and able to use the QS themselves. On the other hand, opponents to restrictions on leasing claimed that leasing would give QS holders more flexibility in conducting their fishing business and would reduce the cost of entering the fishery. Moreover, they claim that leasing prohibitions would be difficult or impossible to enforce.

The Council recommended a temporary trail period of 3 years during which catcher vessel QS holders may lease up to 10 percent of their QS. In addition, no leasing restrictions were recommended for freezer vessel QS. The Council reasoned that allowing a small portion of a QS to be leased would not lead to the problems that concern leasing opponents but would provide a moderate increase in flexibility for QS holders. The freezer vessel fleet is a newer fleet with less catch history relative to the catcher vessel fleet. Hence, the freezer vessel fleet is likely to receive a smaller proportion of the total amount of QS available for any area. Therefore, the amount of QS available for transfer among freezer vessels is likely to be constrained. The additional flexibility that leasing would provide freezer vessel owners is justified under these circumstances. Moreover, the potential for absentee QS holders in this category was of less concern than in the catcher vessel categories.

The transfer of QS by lease would be administered in the same manner as a permanent transfer. An approved QS lease would temporarily increase the amount of QS and IFQ held by the person receiving the leased QS. All leased QS would cease to have effect on December 31 of the year in which the lease transfer was approved. Therefore, leased QS would have no effect on the calculation of IFQ for the following year.

Limitations on Use of QS and IFQ

The principal constraints on the use of QS and IFQ are intended by the Council primarily to limit consolidation of QS and to assure that practicing fishermen, and not investment speculators, remain as the "stock holders" of the fishery resource under limited access management. This purpose is perceived as important to maintain the current social and economic character of the fixed gear fishery, especially in the catcher vessel fleet in southeast Alaska. The principal management measures proposed to carry out this purpose, with certain exceptions, would: (a) limit the amount of QS that could be used by any person, (b) limit the amount of IFQ halibut or sablefish that could be harvested on any vessel, and (c) for catcher vessels, require the QS holder to be on board during fishing operations.

Limits on QS Use

No person, individually or collectively, would be able to use an amount of sablefish QS greater than 1 percent of the combined total fixed gear TAC or sablefish in the GOA and BSAI regulatory areas. In the area east of 140° west longitude, no person, individually or collectively, would be able to use more than 1 percent of the total amount of QS for this reporting area. In both cases, an exception would be provided for persons who received amounts in excess of 1 percent in the initial allocation of QS. For halibut, the comparable use limits would be 1 percent of the total amount of halibut QS for regulatory area 2C, one-half of one percent of the total for areas 2C, 3A, and 3B combined (roughly comparable to the GOA), and one-half of one percent of the total for all of area 4 (roughly comparable to the BSAI).

In its proposed FMP amendment, the Council states that no person may "own, hold, or otherwise control" QS or IFQ in excess of the specified limits. The proposed rule prescribes a limit on use of QS. The reason for this difference between the FMP and proposed rule language is that the Secretary would not be able to impose a limit on the amount of QS owned, held or controlled by an entity, but could impose a limit on how much of its QS is used. For example, a person may acquire QS through an inheritance or by court order (operation of law). Such a transfer would be beyond the Regional Director's authority to approve or disapprove. In this event, the person receiving QS would be required to notify the Regional Director of such a transfer pursuant to § 676.21(c). If the person is otherwise eligible to use QS, then subsequent issuance of IFQ based on that QS would be subject to the specified use limits. The IFQ permit issued to this person, therefore, may not include all the IFQ that would be derived from the QS if there were no use limits. The only way to use QS is through an IFQ permit issued by the Regional Director.

The term "individually and collectively" was deliberately used by the Council to encompass the possibility of a person holding QS as an individual and having a proprietary interest in a corporation (or partnership) that also may hold QS. In this event, the person's proportionate interest in the corporation would be considered equal to the interest that person has in the corporation's QS, and that amount would be added to the QS that the person holds as an individual. The Regional Director would take the total, "individual and collective," QS into account when calculating the amount of IFQ that could be allocated to the individual (or the corporation) in any year. The Council believes that such QS use limits, implemented on an individual and collective basis, would prevent the aggregation of control over IFQ fisheries in the hands of a few operators. The Secretary invites public comment on the efficacy of this particular proposed measure.

Limits on IFQ Harvests by Vessels

No vessel would be allowed to harvest more than a specified proportion of the total catch limits for halibut and sablefish during any fishing year. An exception to this restriction is provided to persons who receive an IFQ allocation in excess of the prescribed vessel-harvest limits. Such persons would be allowed to harvest their IFQ on a single vessel during a fishing year.

For halibut harvests outside of regulatory area 2C, this restriction would limit any vessel from harvesting more than one-half of one percent of the combined total catch limits of halibut in all regulatory areas off Alaska during any fishing year. In regulatory area 2C, the vessel restriction would limit harvests to no more than one-half of one percent of the halibut catch limit for this area. In 1992, the total halibut catch limit for all regulatory areas off Alaska was 51,730,000 pounds (23,464 metric tons (mt)). If the proposed IFQ program were in effect in 1992, the maximum amount of halibut that could be harvested with a single vessel outside of area 2C would have been one-half of one percent of the total halibut catch limit, or 258,650 pounds (117 mt). The catch limit of halibut in area 2C for 1992 is 10,000,000 pounds (4,536 mt).

Therefore, the vessel catch limit under the proposed rule would have been 50,000 pounds (23 mt).

For sablefish outside of the regulatory area east of 140° west longitude, this restriction would limit any vessel from harvesting more than 1 percent of the combined fixed gear TAC of sablefish for all GOA and BSAI reporting areas during any fishing year. In the area east of 140° west longitude, the vessel restriction would limit harvests to no more than 1 percent of the sablefish fixed gear TAC for this area. In 1992, the total fixed gear TAC of sablefish for all GOA and BSAI reporting areas was 20,899 mt. If the IFQ program were in effect in 1992, the maximum amount of IFQ sablefish any person could harvest with a single vessel outside of the area east of 140° west longitude would have been 1 percent of 20,899 mt or 209 mt. The catch limit of sablefish on fixed gear in the area east of 140° west longitude for 1992 is 4,740 mt. Therefore, the vessel catch limit in this area under the proposed rule would have been 47 mt in 1992.

This proposed restriction is intended to supplement restrictions on the transfer of QS or IFQs between vessel categories. It would prevent the possibility of the IFQ fishery being conducted from a small number of large vessels. Again, this proposed restriction is in response to public concern expressed about too much consolidation of the current fishing fleet under the IFQ program and its socio-economic consequences. Despite the exception for using a single vessel to harvest IFQ allocations that exceed these limits, this restriction could prevent significant pooling of IFQ held by a vessel owner and crew members. In addition, a vessel that has reached its vessel harvest limits would not be allowed to retain halibut or sablefish caught incidental to a fixed gear fishery for Pacific cod, for example, even if the vessel operator and crew had sufficient unharvested IFQ and would otherwise be required to retain such catches. Also, a vessel that had reached its vessel harvest limit would not be allowed to harvest additional IFQ species if the vessel were sold to a new IFQ holder. NMFS requests public comment on the efficacy of this proposed measure.

QS Holder on Board

Except for initial recipients of QS, a key element of the proposed IFQ program is the requirement for catcher vessel QS holders to be on board the vessel during fishing operations and to sign the required landing report. The Council intended this measure to assure that catcher vessel QS would continue to be held by professional fishermen after the initial allocation process instead of being acquired by investment speculators, and to assure that the catcher vessel fleet remained primarily an owner-operator fleet. The concern about investors is based on frequently expressed fears that the IFQ program could profoundly change the current socio-economic character of the fixed gear fishing fleet and the coastal communities in Alaska where this fleet is based. The Council did not extend this measure to holders of freezer vessel QS because this vessel category is a relatively small proportion of the overall fixed gear fleet and does not have the same socio-economic significance to Alaskan coastal communities.

This requirement would be implemented by requiring all individuals who harvest halibut or sablefish with fixed gear to have a valid IFQ card, to be on board the vessel at all times during fishing operations, and to sign the required IFQ landing report. An IFQ card identifies an IFQ permit holder to land halibut or sablefish for debit against the permit holder's IFQ. To use catcher vessel IFQ, the IFQ card holder must be the same individual who also holds the IFQ permit and the QS from which the associated IFQ is derived. NMFS expressly requests comment upon the appropriateness of this requirement, including impacts on potential crew members, when the holder of the QS and the IFQ permit is ill, or otherwise unable to be onboard (i.e., during jury duty). These requirements may be waived in the event of extreme personal emergency involving the IFQ user during a fishing trip. Comments are requested on whether and how a procedure for designating a substitute should be implemented.

Sole proprietor commercial fishing businesses are not likely to have difficulty complying with this restriction because the vessel owner who receives the initial allocation of QS is likely to be the same individual who would be on board using the IFQ derived from that allocation. However, the Council recognized that many of these fishing firms may use hired masters to operate their vessel. The Council did not wish to constrain this option for these small businesses. Therefore, the Council recommends an exception to the QS-holder-on-board requirement if the individual who receives an initial allocation of catcher vessel QS: (a) owns the vessel on which the IFQ halibut or sablefish are harvested, and (b) is represented on the vessel by a master employed by the individual. The exception would not apply to individuals who receive initial allocations of catcher vessel QS for halibut in regulatory area 2C or sablefish in the regulatory area east of 140° west longitude. Based on public testimony from residents of southeast Alaska adjacent to these areas, the Council perceived no need to extend the exception to these areas.

A similar exception is provided to corporations and partnerships that operate catcher vessels. A corporate holder of a QS could not be on board as an "individual" unless that individual were an employee of the corporation or partnership. Therefore, the Council recommends the same exception to the QS-holder-on-board requirement for such firms or "persons" as is applied to "individuals" (i.e., the person that receives an initial allocation of catcher vessel QS must: (a) Own the vessel on which the IFQ halibut or sablefish are harvested, and (b) be represented on the vessel by a master employed by the person).

Both exceptions would not be transferrable to subsequent buyers of the catcher vessel QS. However, persons to whom the exceptions apply could acquire more QS and use it, up to the use limitations described above. As applied to corporations and partnerships, the exception would cease whenever a change occurs in the corporation or partnership. Hence, a corporation that changes its ownership structure would be required to transfer its QS to an individual and comply with the QS-holder-on-board requirement after the change. The proposed rule (at § 676.22(j)(2)) defines such a change as an addition of any new shareholder or partner to the corporation or partnership after initial allocation of QS. The subtraction of a shareholder or partner and the addition of a court-appointed trustee to act on behalf of an incapacitated shareholder or partner would not be considered a change that would cause loss of the QS-holder-on-board exception. The intended effect of this provision is ultimately for all catcher vessel QS to be held by individuals who personally use the derived IFQ on board vessels fishing for the IFQ species.

Other QS Use Limitations

In addition to the QS use limitations described above:

1. The QS or IFQ specified for one regulatory area and one vessel category could not be used in a different area or category. This measure would be necessary to give effect to the separate area and vessel category allocations.

2. Halibut and sablefish IFQ could be used to harvest these species only with

fixed gear. Legal gear for harvesting halibut is hook-and-line gear (50 CFR 301.16). Any person who catches halibut with fishing gear other than hook-and-line gear must immediately return the fish to the sea with a minimum of injury. For example, a fisherman who holds halibut and sablefish IFQ in the BSAI and who catches both species with pot gear could use his sablefish IFQ to land the sablefish but would be required to discard his halibut. For sablefish, this measure would separate trawl gear from fixed gear and apply the IFQ program only to the fixed gear fishery. Annual apportionments of sablefish to trawl gear would continue to be harvested in an open access fishery.

3. Catcher vessel IFQ may be used on a freezer vessel, providing no frozen or otherwise processed fish products are on board at any time during a fishing trip on which catcher vessel IFQ is being used. This provision is intended to enhance opportunities for IFQ crew members. The Council assumed that most IFQ crew members who enter the fishery by purchasing QS would purchase catcher vessel QS because those QSs would be in greater supply and potentially less expensive than freezer vessel QS. However, the Council did not want to enhance opportunities to process fish of any species offshore and thereby deprive shore-based plants the opportunity to process those fish. Therefore, when catcher vessel QS is used on board a freezer vessel, all fish of any species would have to be landed as unprocessed product. Processing of IFQ species harvested with catcher vessel QS would not be allowed on board the vessel using those QSs. The reverse situation, using freezer vessel IFQ on a catcher vessel, would not be allowed. Moreover, a catcher vessel would not be allowed to land any IFQ species as frozen or otherwise processed product.

4. Fishing under the proposed program for halibut and sablefish is expected to result in an incidental catch, or bycatch, of other species and vice versa. In addition, a bycatch of small halibut (i.e., less than the legal size of 32 inches (81.3 cm) specified at 50 CFR 301.12) is likely in halibut and other fixed gear fisheries. Such undersized halibut could not be retained and would not be counted against an IFQ. Hooking mortality of halibut is relatively low if the animal is carefully handled and returned to the water immediately with a minimum of injury. The bycatch of halibut in fixed gear fisheries for other species is controlled with prohibited species catch (PSC) limits. The Council recommended temporary suspension of existing PSC limits of halibut applicable to fixed gear fisheries. The Council reasoned that maintaining the halibut bycatch limits could undermine the success of the program if IFQ fishermen were prevented from harvesting their allocation because the fishery was closed due to achievement of the bycatch limit. Without suspension of the halibut PSC limit, the bycatch of halibut in non-IFQ fisheries could cause early exhaustion of the PSC limit. If this were likely, it would result in a race for fish (i.e., PSC halibut) in one of the IFQ fisheries. Preventing the need to race for fish is one of the objectives of the proposed of IFQ program. In addition, some halibut that would have been counted as bycatch in an open access fishery would be retained under the IFQ program. The remaining halibut bycatch mortality is not likely to be any greater than it is currently under open access management. NMFS would monitor closely the halibut bycatch under the IFQ program to determine whether the imposition of bycatch controls under the IFQ program is necessary.

Initial allocations of QS probably would not yield an IFQ large enough for many fishermen to conduct a full-time directed fishery for either halibut or sablefish throughout the IFQ fishing season. Therefore, many IFQ fishermen are expected to use their IFQ to retain their bycatch of halibut or sablefish in fisheries for other species. If the other species have more market value than the bycatch of IFQ species, fishermen would have an incentive to discard the bycatch of IFQ species. To prevent this practice, the proposed rule would prohibit the discard of IFQ halibut or sablefish from any catcher vessel when any IFQ holder on board has unused halibut or sablefish IFQ for that vessel and the area in which the vessel is operating. Exceptions to this prohibition include: (1) The discard of undersized halibut; (2) the discard of halibut caught outside of an open fishing period; (3) the discard of sablefish in excess of bycatch allowances; and (4) the discard of halibut or sablefish in excess of proposed vessel limits. In addition, the Council chose not to include freezer vessels in this prohibition because the processing technology used on such vessels often does not allow the retention of any bycatch.

Further, the proposed rule prohibits the discard of Pacific cod and rockfish taken as bycatch in a directed fishery for IFQ halibut or sablefish. This requirement is intended to prevent the reverse circumstance of discarding these species to save room for higher valued IFQ halibut or sablefish. Discarded Pacific cod and rockfish would be wasteful of these resources because they are unlikely to survive hooking and rapid changes in depth. The only exception to this prohibition would occur when the Regional Director closes directed fishing for these species or determines that these species should be treated in the same manner as prohibited species to prevent exceeding their TACs.

Monitoring and Enforcement Provisions

A discussion of the monitoring and enforcement plan is provided at section 5.4 (page 5–25) of the FEIS/SEIS. A summary of several important provisions follows:

IFQ and Registered Buyer Permits

In addition to existing permit and licensing requirements (at 50 CFR 301.3, 672.4, and 675.4), an IFQ permit would be required of any person that harvests a QS allocation of halibut or sablefish. An IFQ permit would authorize the harvesting of that allocation up to prescribed use limits. The IFQ permit would identify the QS holder and the amount of sablefish or halibut that may be harvested by area and vessel category in which the permit holder is authorized to operate. All fishing vessels that harvest IFQ species would be required to have on board a copy of the IFQ permit available for inspection by an authorized officer.

The IFQ permit is a necessary mechanism for authorizing the use of a QS, or portions of a QS, and for sanctioning the continued use of all or part of a QS. On board inspections at sea that reveal amounts of IFQ halibut or sablefish that are in excess of the IFQ permit would indicate potential violations of IFQ rules. Sufficient IFQ for the amount of IFQ species to be harvested should be available before beginning an IFQ fishing trip to prevent fishermen from speculating on the purchase of IFQ or lease of QS before landing their IFQ fish.

In addition to an IFQ permit, all vessels that harvest IFQ species would be required to have on board one or more individuals who hold an IFQ card. This card would authorize the individual to whom it is assigned to land IFQ halibut or sablefish for debit against the permit holder's IFQ. The individual identified on the IFQ card may be the same individual listed on the IFQ permit. However, a corporation or partnership may authorize the issuance of several IFQ cards to individuals employed by the firm. As such, the IFQ card would function similar to a commercial credit card, several of which could be issued to

members of a family for debiting the purchase of merchandise against a single credit account. Each IFQ card also would identify an IFQ account against which the holder of the card could land IFQ halibut or sablefish. Holders of IFQ cards could pool their authorized amounts of halibut or sablefish harvests for use on a single vessel (up to the vessel harvesting limit). As a result, IFQ crew members are expected to establish a market for their services and a cadre of professional fishing vessel crew members.

Any person who receives IFQ halibut or sablefish from the person(s) who harvested it would be required to have a registered buyer permit. This permit would authorize a person to receive IFQ species from an IFQ card holder or make a landing of IFQ species. All halibut or sablefish harvested under the IFQ program would have to be landed to or by a person with a registered buyer permit. A registered buyer permit would be required to be present at the location of an IFQ landing and made available for inspection by an authorized officer. The purpose of such a permit is to establish a point at which reporting, accounting, and auditing of landed IFQ species will begin. The permit also would provide a sanctioning mechanism in response to violations of reporting and landing requirements.

A person who wishes to sell his harvest of IFQ halibut or sablefish directly to consumers may do so if they hold an IFQ permit, card, and a registered buyer permit. All required reports would have to be made from such dockside sales before any fish are sold or removed from the immediate vicinity of the vessel. Receipts would have to be issued to all persons who receive fish directly from the fisherman in this manner. This provision would allow a common practice to continue while maintaining a capability to monitor and enforce landing requirements.

Landing of IFQ Species

The proposed rule defines an "IFQ landing" as the unloading or transferring of any IFQ halibut or sablefish or products of those species from the vessel that harvested such fish. A transfer of IFQ halibut or sablefish from the harvesting catcher vessel to a freezer vessel would thus constitute an IFQ landing. This definition differs from the term "landing" as used in 50 CFR parts 672 and 675, which is simply the off-loading of any fish. The reason for this difference is the need to begin reporting requirements and accounting of IFQ species at the first off-loading of such fish. This is the most critical point for monitoring and enforcement purposes in the movement of harvested fish from the ocean to market.

A capability to monitor an IFQ landing and enforce provisions of the IFQ rules is necessary to all IFQ landings. A requirement to give prior notice of an IFQ landing is proposed to satisfy this need. The operator of any vessel making an IFQ landing would be required to give NMFS notice of the landing no less than 6 hours before landing any IFQ species. No transfer of any fish from the vessel making the landing would be allowed until at least 6 hours after giving notice of the landing, unless permission is granted from an authorized officer. The IFQ permit would include instruction on how to give this notice.

The intent of this requirement is to give monitoring and enforcement personnel an option of observing the landing and inspecting the vessel making the landing. The real potential of such monitoring is expected to inspire most fishermen to comply with reporting and landing requirements. Prior notice of landing reports could be made whenever the vessel operator can determine the expected time of arrival of the vessel at the landing location. Hence, unproductive vessel time spent waiting for its landing time should be minimized by advance planning of the vessel operator.

Any person that makes an IFQ landing outside the State of Alaska would be required to (a) have a registered buyer permit and (b) receive written clearance for the vessel on which the IFQ halibut or sablefish are to be transported to the landing location. This vessel clearance would be required prior to departing waters in or adjacent to the State of Alaska. An estimated weight of the IFQ species would be required for clearance and a vessel seeking clearance would be subject to inspection of all fish as well as pertinent log books, permits, or other documents on board the vessel. Such vessel clearance would be issued by NMFS enforcement officers only at specified ports. The 16 ports specified in the proposed rule for this purpose were selected based on recent records of the volume of halibut and other groundfish landed in them and on their geographical locations.

The intent of this requirement is to assure that IFQ halibut and sablefish landed outside Alaska are adequately monitored, and that NMFS would have an opportunity to ensure compliance with IFQ rules before a vessel making such a landing is physically outside the range of enforcement. The primary ports for vessel clearances were chosen to funnel such vessels through ports at which NMFS enforcement personnel would be permanently stationed. The requirement to have a registered buyer on board a vessel making an IFQ landing outside of Alaska is to assure that required landings reports would be submitted. This provision would not restrict the landing of IFQ halibut or sablefish to any registered buyer at any port.

Western Alaska Community Development Quota (CDQ)

The CDQ Program is proposed in conjunction with the IFQ program to provide fishermen who reside in eligible western Alaska communities a fair and reasonable opportunity to participate in the BSAI Pacific halibut and sablefish fisheries. This CDQ program is intended to help provide stable, long-term employment in eligible communities by guaranteeing them a definite proportion of the halibut and sablefish resources. This should improve their ability to capitalize and expand their participation in salmon, Pacific herring, and other near-shore fisheries while harvesting halibut and sablefish CDQs. The CDQ program would diversify the local economies and help to alleviate the growing socio-economic crisis within these communities.

Program Description

The NMFS Regional Director would hold the designated percentages of the annual fixed gear TAC for sablefish and halibut for the CDQ Program as described below. These amounts would be apportioned to eligible Alaska communities that submit a Community Development Plan (CDP) that is approved by the Governor of the State of Alaska (Governor) and submitted to the Secretary after consultation with the Council. The CDPs must satisfy the objections or the CDQ program and be consistent with the CDQ regulations and other applicable law. The portions of halibut and sablefish TACs for each management area not designated to CDQ fisheries would be allocated as QS and IFQs pursuant to the general IFQ program. For sablefish, the NMFS Regional Director will hold 20 percent of the annual fixed-gear TAC of sablefish for each management area in the BSAI for the CDQ program. Not more than 12 percent of the sablefish reserve may be designated for a CDP.

The amounts of quota to be set aside for the halibut CDQ program vary by IPHC area and are exclusive of issued QS under the IFQ program. For IPHC management area 4B, 20 percent of the halibut quota would be made available

for communities located in or proximate to the management area. For IPHC management area 4C, 50 percent of the halibut quota would be made available for communities located in the management area. For IPHC management area 4D, 30 percent of the halibut quota would be made available for communities located in IPHC management areas 4D and 4E. For IPHC management area 4E, 100 percent of the halibut quota would be made available to residents of communities located in or proximate to that management subarea, and trip limits of less than 6,000 pounds will be enforced. The term "proximate to" an IPHC management area is defined as within 10 nautical miles from the point where the boundary of the IPHC regulatory area intersects land. These proportions appear high; however, the halibut catch limits in these areas are relatively low. In 1992, the total catch limit to halibut in areas 4B, 4C, 4D, and 4E combined was more than 4,000,000 pounds (1,828 mt), or about 7.8 percent of the total halibut catch limit of all IPHC areas in and off of Alaska. In addition, these proportions roughly approximate recent catches of halibut by residents of these areas. For example, local fishermen in area 4C harvested an average of 42 percent of the total 4C catch over the 6-year period 1984–1989 and an average of 60 percent over the 2-year period 1988–1989.

Those persons who would otherwise have received a full complement of QS for either sablefish or halibut in any management area subject to the CDQ program, but would receive less due to the provisions of CDQs, will be partially compensated, and the cost of compensation will be borne equally by all initial halibut and sablefish QS/IFQ recipients. In general, this compensation plan will issue incremental amounts of QS in each non-CDQ area to each person disadvantaged by the CDQ program.

Eligible Communities

Communities that meet certain criteria would be eligible to apply for halibut and sablefish CDQs. Eligible communities are those that meet criteria developed by the Governor, in consultation with the Council. The Secretary has determined that the communities listed in Table 1 at § 676.25 meet these criteria; however, communities that may be eligible to submit CDPs and received halibut or sablefish CDQs are not limited to those listed in this table. For a community to be eligible, it must meet the following criteria:

(1) The community must be located within 50 nautical miles from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the westernmost of the Aleutian Islands, or on an island within the Bering Sea. A community is not eligible if it is located on the GOA coast of the North Pacific Ocean even if it is within 50 nautical miles of the baseline of the Bering Sea;

(2) The community must be certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Pub. L. 92–203) to be a native village;

(3) The residents of the community must collectively conduct more than one-half of their current commercial or subsistence fishing effort in the waters surrounding the community; and

(4) The community must not have previously developed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI, except if the community can show that CDQ benefits would be the only way to realize a return from previous investments. Unalaska and Akutan are the only two communities at this time that would be excluded under this provision.

Prior to approval of the Governor's recommendations for approval of CDPs and allocations of halibut and sablefish CDQ, the Secretary would review the Governor's findings as to how the communities meet these criteria for eligible communities.

CDP Application

Under the proposed regulations, a qualified applicant from an eligible community or group of communities may apply for approval of a CDP but may not concurrently be a recipient of more than one halibut CDQ allocation or more than one sablefish CDQ allocation. To prevent monopolization of CDQ allocations and ensure an adequate distribution of benefits from the CDQ program, the Secretary would allocate no more than 12 percent of the sablefish CDQ reserve to any approved sablefish CDP. A CDP would consist of three parts: (1) Community development information; (2) business information; and (3) a statement of the managing organization's qualifications.

Community development information includes goals, objectives, and information concerning the project(s) that will develop the fishing industry in the community. The business information of a CDP includes information about the harvesting of CDQ sablefish or halibut, and the business aspects of the project. The statement of the managing organization's qualifications includes information to ensure that the managing organization, whether it is the CDP applicant or a group contracted by the CDP applicant, is qualified and has the ability to manage properly the harvesting of halibut or sablefish CDQ and the fisheries development project of the community.

The intent of these regulations is for all CDPs to be similarly structured to facilitate their review and comparison. These standards are expected to reduce the need for follow-up information and should minimize administrative expenses for application review and evaluation.

Secretarial Review

The Governor, after consultation with the Council, would recommend specific CDPs to the Secretary. The Governor's recommendations may support all or part of the percentage of halibut or sablefish CDQs and the number of years of CDQ allocation requested by an applicant. The total CDQ allocation included in the CDPs recommended by the Governor may not exceed the total amount of sablefish CDQ reserve or the amount of halibut allocated for each of the four IPHC management areas.

When the Secretary receives the Governor's recommendations, including the Governor's findings that the CDPs meet the requirements of these regulations and the Alaska Coastal Management Program, the Secretary would review the record of the Governor's findings, the transcript or summary of the public hearings held by the Governor in making the recommendations, and other relevant information to determine if the proposed CDPs are consistent with the eligibility and approval criteria. The Secretary would then approve or disapprove the Governor's recommendations.

In the event of approval, the Secretary would prepare a set of findings with respect to the requirements of these regulations. The Governor and the Council would be notified in writing of the Secretary's decision, including the findings. Public notice of the decision would appear in the **Federal Register** and would include the specific allocation of halibut and sablefish CDQ reserve by area made to specific CDPs.

In the event of disapproval, the Secretary would notify the Governor and the Council in writing, including the reasons for disapproval. Publication of the decision also would appear in the **Federal Register**.

Monitoring of CDPs

A final report to the Governor would be required to be submitted by June 30 of the final year of a halibut or sablefish

CDP showing how the CDP's goals and objectives were met as set forth at § 676.25(d)(1). For continuing CDPs, annual reports would be required to be submitted to the Governor by June 30 of the year following the CDP allocation. Failure to submit an annual report could result in suspension or termination of a CDP. The Governor would then review the status of the project and determine whether the project is being managed according to the provisions of the original CDP, and submit an annual report with recommendations on whether to continue the allocation to the Secretary for approval. The Governor must be notified of and approve amendments to an approved CDP and submit a recommendation for approval of the amendment to the Secretary. Amendments to a CDP of which the Governor must be notified are those set forth at § 676.25(g)(3) and include any change in the relationships among the business partners, the profit sharing arrangements, the CDP budget, the management structure, or audit procedures or control.

Suspension or Termination

If any applicant fails to notify the Governor of an amendment to a CDP, if a CDP appears unlikely to meet its goals and objectives, or if a CDQ recipient is deviating from the approved CDP, the Governor may submit a recommendation to the Secretary that the CDP be suspended or terminated. The Governor must set out in writing his reasons for recommending suspension or termination of the CDP. After review of the Governor's recommendation and reasons, the Secretary would notify the Governor in writing of approval or disapproval of the Governor's recommendation. If the Secretary approves the Governor's recommendation, NMFS would publish a notice in the **Federal Register** that the CDP has been suspended or terminated, with reasons for the Secretary's decision. The Secretary may also suspend or terminate any CDP at any time if the Secretary finds that a recipient of a CDQ allocation is not complying with these regulations or any other regulations and provisions of the Magnuson Act or other applicable law, or if the FMPs are amended.

Consistency With Proposed Pollock CDQ Program

The pollock CDQ program that was authorized by the approved portion of Amendment 18 on March 4, 1992, has goals and objectives that are similar to this sablefish and halibut CDQ program. Communities that are eligible to apply for the pollock CDQ program are the same communities that would be eligible to apply for sablefish and halibut CDQs. It is important for the pollock, sablefish, and halibut CDQ programs to be as consistent as possible, given that the same communities will be eligible to apply for each of the three types of CDQs to support CDPs with similar objectives. Significant differences in these two CDQ programs will confuse the public and create difficulties with the State and Federal evaluation of CDPs.

The Council approved a motion on the sablefish and halibut CDQ program in December 1991. This motion language contains some differences from the pollock CDQ program. In order to minimize the differences between the pollock and the sablefish/halibut CDQ programs, these regulations diverge from the motion language in several ways in order to maintain consistency. The parts of these regulations that diverge from the motion language are listed below:

1. The Council motion states "within 45 days of receipt of an application from a community, the Governor shall review the community's eligibility for the program and the community development plan, and at least 14 days prior to the next NPFMC meeting, forward the application to the North Pacific Fishery Management Council for its review and recommendations." The motion also states that "if portions of the total quota are not designated by the end of the second quarter, communities may apply for any portion of the remaining quota for the remainder of that year only." These two statements imply that the CDPs will be received throughout the year, and that a system needs to be in place to ensure Council review. These regulations propose a system similar to the pollock CDQ program where the Governor would announce an open application period in the third or fourth quarter when all proposed CDPs for the succeeding year would be received. The Governor would develop recommendations for the approval of CDPs, and consult with the Council on the recommendations before sending them to the Secretary for approval.

2. "Within 30 days of receipt of the criteria from the Governor, the Secretary will approve, disapprove, or return the criteria to the Governor with recommendations for changes necessary to comply with the provisions of this act, or other applicable law." This statement refers to the criteria, or the standards for proposed CDPs. As part of the pollock CDQ program the State developed these criteria in consultation with NMFS. These criteria were used by NMFS in the regulations for the pollock CDQ program and also in these regulations. Therefore, the Secretary will approve these criteria if the pollock CDQ program final rule, or if these regulations, are approved.

3. The Council motion states that "within 30 days of the receipt of an application approved by the Governor, the Secretary will designate a portion of the quota to the community . . . ." To make the two CDQ programs consistent, the "30 days" requirement should be changed to 45 days.

Classification

This proposed rule is published under section 304(a)(1)(D) of the Magnuson Act, as amended by Pub. L. 99–659, which requires the Secretary to publish regulations proposed by the Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has initially determined that the amendments these regulations would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. The Secretary, in making final determinations, will take into account the data and comments received during the comment period.

The Council prepared a draft EIS/SEIS under the requirements of NEPA. The draft EIS/SEIS was revised in March 1992, to incorporate analysis of the Council's preferred alternative. Notification of a 45-day public comment period on the revised draft EIS/SEIS dated March 27, 1992, was published on May 15, 1992 (57 FR 20826). Public comments received are summarized and responded to in the FEIS/SEIS that was submitted to the Secretary by the Council in support of its proposed amendment. A copy of the FEIS/SEIS may be obtained from the Council (see **ADDRESSES**).

This proposed rule is exempt from procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act require the Secretary to publish this proposed rule 15 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget (OMB), with an explanation of why it is not possible to follow procedures of the order.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the FEIS/SEIS prepared by the Council. The FEIS/SEIS concludes that the total of the estimated

annual benefits that have been quantified ranges from $30.1 million to $67.6 million. The estimates could be increased by $11.0 million to $13.9 million if the vessel restrictions that prevent the redistribution of catch to the lowest cost vessels were eliminated. Total annual costs for administration and enforcement are estimated to be about $2.7 million. In addition, there would be a one-time initial implementation cost of about $1.9 million. Additional non-quantifiable costs include, but are not limited to, transition costs due to changes in employment patterns in the fisheries, and increased recordkeeping and reporting requirements. A copy of the FEIS/SEIS may be obtained from the Council (see **ADDRESSES**).

The Assistant Administrator concludes that this proposed rule, if adopted, would have a significant economic impact on a substantial number of small entities. This determination is based on the FEIS/SEIS prepared by the Council. The FEIS/SEIS concludes that as many as 7,200 vessels/persons may be affected by a change to the proposed IFQ management program. Current active participants in the halibut fishery in any one year include about 4,000 vessels, and about 650 vessels in the sablefish fishery. These fishing vessels or operators are generally considered to be small businesses. A copy of the FEIS/SEIS may be obtained from the Council (see **ADDRESSES**).

This rule involves collection-of-information requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) that have been submitted to the Office of Management and Budget for approval. The estimated response time for each proposed collection of information required during the 2-year implementation period is expected to be 5.5 hours for the QS application, 4 hours to file an appeal on a QS application, and 2 hours for an IFQ crew member eligibility application.

The estimated response time for each proposed collection of information during each year after the implementation period is 1 hour for notification of inheritance of QS, 2 hours for the application for transfer or lease of QS/IFQ, 2 hours for the Corporate/Partnership or other entity Transfer Eligibility application, 0.5 hours for the registered buyer application, 0.1 hour for the dockside sale receipt, 0.1 hour for prior notice of IFQ landing, 0.1 hour for permission to land IFQs at any time other than 0600–1800, 0.1 hour for the vessel clearance application, 0.2 hours for the IFQ landing report, 0.1 hour for a transshipment notice, and 0.2 hour for the shipment or transfer report.

Additional costs to the public totaling $150,000 for the implementation period and $225,000 for each subsequent year are proposed for the IFQ program.

The estimated response time for each information requirement of the CDQ portion of the IFQ program will be approximately 160 hours per CDP, 40 hours for each annual report, 40 hours for each final report, and 10 hours for each amendment to a CDP.

These reporting burdens include the time for reviewing the instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

NMFS has determined that this rule, if adopted, will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 12612.

Adoption of the proposed management measures would not adversely affect any listed species within the jurisdiction of NMFS. Therefore, the Regional Director determined that a formal section 7 consultation is not required before publication of this proposed rule.

Implementation of the proposed rule would not adversely affect any marine mammal population.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: November 25, 1992.

Nancy Foster,

Acting Assistant Administrator for Fisheries.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended, and 50 CFR part 676 is proposed to be added, to read as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

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

2. In § 672.2, a new definition is added in alphabetical order to read as follows:

§ 672.2 Definitions.

* * * * *

Fixed gear means all groundfish pot-and-line or longline pot gear, and all hook-and-line gear, including longline, handline, jig, or troll gear that may be used to harvest groundfish subject to restrictions of this part.

* * * * *

3. Section 672.3 is revised to read as follows:

§ 672.3 Relation to other laws.

(a) *Foreign fishing.* Regulations governing foreign fishing for groundfish in the Gulf of Alaska are set forth at 50 CFR 611.92. Regulations governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands area are set forth at 50 CFR 611.93.

(b) *Halibut fishing.* Regulations governing the conservation and management of Pacific halibut are set forth at 50 CFR parts 301 and 676.

(c) *Domestic fishing for groundfish.* Regulations governing the conservation and management of groundfish in the EEZ of the Bering Sea and Aleutian Islands area are set forth at 50 CFR parts 620 and 675.

(d) *Limited access.* Regulations governing access to commercial fishery resources off Alaska are set forth at 50 CFR part 676.

(e) *Marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth at 50 CFR 216.24 and part 229.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS

4. The authority citation for 50 CFR part 675 continues to read as follows:

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

5. In § 675.2, a new definition is added in alphabetical order to read as follows:

§ 675.2 Definitions.

* * * * *

Fixed gear means all groundfish pot-and-line or longline pot gear, and all hook-and-line gear, including longline, handline, jig, or troll gear that may be used to harvest groundfish subject to restrictions of this part.

* * * * *

6. Section 675.3 is revised to read as follows:

§ 675.3 Relation to other laws.

(a) *Foreign fishing.* Regulations governing foreign fishing for groundfish in the Gulf of Alaska are set forth at 50 CFR 611.92. Regulations governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands area are set forth at 50 CFR 611.93.

(b) *Halibut fishing.* Regulations governing the conservation and management of Pacific halibut are set forth at 50 CFR parts 301 and 676.

(c) *Domestic fishing for groundfish.* Regulations governing the conservation and management of groundfish in the EEZ of the Gulf of Alaska are set forth at 50 CFR parts 620 and 672.

(d) *Limited access.* Regulations governing access to commercial fishery resources off Alaska are set forth at 50 CFR part 676.

(e) *Marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth at 50 CFR 216.24 and part 229.

7. In § 675.20, the introductory text of paragraph (a)(3) is revised to read as follows:

§ 675.20 General Limitations.

(a) * * *

(3) *Reserve.* Fifteen percent of the TAC for each target species and the "other species" category, except fixed gear sablefish, is automatically placed in a reserve, and the remaining 85 percent of the TAC for each target species and the "other species" category, except fixed gear sablefish, is apportioned between DAH and TALFF. The reserve is not designated by species or species group and any amount of the reserve may be apportioned to a target species, except fixed gear sablefish, or the "other species" category, provided that such apportionments are consistent with paragraph (a)(2)(i) of this section and do not result in overfishing of a target species or the "other species" category.

* * *

* * * * *

8. In § 675.24, the introductory text of the section if removed and the section heading and paragraph (c)(1) are revised to read as follows:

§ 675.24 Gear limitations.

* * * * *

(c) *Gear allocations.* (1) Vessels using gear types other than those specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section must treat sablefish in the same manner as a prohibited species.

(i) In the Bering Sea and Bogoslof subareas, defined at § 675.2, fixed gear may be used to take up to 50 percent of the TAC for sablefish; trawl gear may be used to take up to 50 percent of the TAC for sablefish.

(ii) In the Aleutian Islands subarea, defined at § 675.2, fixed gear may be used to take up to 75 percent of the TAC for sablefish; trawl gear may be used to take up to 25 percent of the TAC for sablefish.

* * * * *

9. A new part 676 is added to chapter VI of 50 CFR to read as follows:

PART 676—LIMITED ACCESS MANAGEMENT OF FISHERIES OFF ALASKA

Subpart A—Moratorium on Entry [Reserved]

Subpart B—Individual Fishing Quota General Provisions

Sec.

676.10 Purpose and scope.
676.11 Definitions.
676.12 Relation to other laws.
676.13 Permits.
676.14 Recordkeeping and reporting.
676.15 Vessel and gear identification.
676.16 General prohibitions.
676.17 Facilitation of enforcement and monitoring.
676.18 Penalties.

Subpart C—Individual Fishing Quota Management Measures

676.20 Individual allocations.
676.21 Transfer of QS and IFQ.
676.22 Limitations on use of QS and IFQ.
676.23 Management areas.
676.24 IFQ fishing season.
676.25 Western Alaska Community Development Quota Program.
676.26 Appeal procedure [Reserved].

Authority: 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 773 *et seq.*

Subpart A—Moratorium on Entry [Reserved]

Subpart B—Individual Fishing Quota General Provisions

§ 676.10 Purpose and scope.

(a) Subparts B and C of this part implement the individual fishing quota management plan for the commercial fisheries that use fixed gear to harvest sablefish (*Anoplopoma fimbria*) and Pacific halibut (*Hippoglossus stenolepis*) as prepared by the North Pacific Fishery Management Council and approved by the Secretary of Commerce.

(b) Regulations in subparts B and C govern the commercial fishing for sablefish by vessels of the United States using fixed gear within that portion of the Gulf of Alaska and the Bering Sea and Aleutian Islands area over which the United States exercises exclusive fishery management authority. Regulations in subparts B and C also govern the commercial fishing for sablefish with fixed gear in the reporting areas of the Bering Sea and Aleutian Islands management areas and the Gulf of Alaska conducted by persons who have been issued permits under § 676.13 of this part.

(c) Regulations in subparts B and C govern the commercial fishing for Pacific halibut by vessels of the United States using fixed gear in Convention waters described in 50 CFR 301.5 that are in and off of the State of Alaska.

§ 676.11 Definitions.

In addition to the definitions in the Magnuson Act and in 50 CFR 301.2, 620.2, 672.2, and 675.2, except as otherwise noted, the terms in this part have the following meanings:

Catcher vessel, as used in this part, means any vessel that is used to catch, take, or harvest fish that are iced, headed, gutted, bled, or otherwise retained as fresh fish product on board during any fishing year.

Community Development Plan (CDP) means an economic and social development plan for a specific Western Alaska community or group of communities that is approved by the Governor of the State of Alaska and recommended to the Secretary under § 676.25 of this part.

Community Development Quota (CDQ) means a western Alaska CDQ for Pacific Halibut or sablefish that is assigned to an approved CDP.

Community Development Quota Program (CDQ program) means the Western Alaska Community Development Program implemented under § 676.25 of this part.

Fixed gear means all groundfish pot-and-line or longline pot gear, and all hook-and-line gear, including longline, handline, jig, or troll gear that may be used to harvest halibut or sablefish subject to restrictions at 50 CFR parts 301, 672, and 675.

Freezer vessel means any vessel that is used to process some or all of its catch during any fishing trip.

Governor means the Governor of the State of Alaska.

Halibut CDQ Reserve means the amount of the halibut catch limit for IPHC regulatory areas 4B, 4C, 4D, and 4E that is reserved for the halibut CDQ program.

Harvesting or to harvest, as used in this part, means the catching and retaining of any fish.

Individual means a natural person who is not a corporation, partnership, association, or other such entity.

Individual fishing quota (IFQ) means the annual catch limit of sablefish or

halibut that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the total allowable catch of sablefish or halibut.

IFQ crew member means any individual who has at least 5 months experience working as part of the harvesting crew in any United States commercial fishery, and any individual who receives an initial allocation of QS.

IFQ halibut means any Pacific halibut (*Hippoglossus stenolepis*) that is harvested with fixed gear.

IFQ landing, as used in this part, means the unloading or transferring of any IFQ halibut, IFQ sablefish, or products thereof from the vessel that harvested such fish.

IFQ sablefish means any sablefish (*Anoplopoma fimbria*) that is harvested with fixed gear.

IPHC means the International Pacific Halibut Commission.

Person, as used in this part, means any individual who is a citizen of the United States or any corporation, partnership, association, or other entity (or their successor in interest), whether or not organized or existing under the laws of any state, that is a United States citizen.

Quota share (QS) means the amount of sablefish or halibut on which the annual calculation of a person's IFQ is based.

Regulatory area, as used in this part, means:

(1) with respect to halibut, areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E defined at 50 CFR 301.6;

(2) with respect to sablefish, any of the three regulatory areas in the Gulf of Alaska defined at 50 CFR 672.2, and any subarea of the Bering Sea and Aleutian Islands management area defined at 50 CFR 675.2, for which a fixed gear TAC is annually specified.

Sablefish CDQ Reserve means 12 percent of the sablefish fixed gear TAC for each subarea in the Bering Sea and Aleutian Islands management area for which a sablefish TAC is specified.

Trip, as used in this part, means the period of time from when a vessel commences fishing until either the vessel enters or leaves a regulatory area, or the commencement of an IFQ landing, whichever occurs first.

United States citizen, as used in this part, means:

(1) Any individual who is a citizen of the United States at the time of application for QS, or

(2) Any corporation, partnership, association, or other entity that would have qualified to document a fishing vessel as a vessel of the United States during the QS qualifying years of 1988, 1989, and 1990.

§ 676.12 Relation to other laws.

(a) *Foreign fishing.* Regulations governing foreign fishing for groundfish in the Gulf of Alaska are set forth at 50 CFR 611.92. Regulations governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands area are set forth at 50 CFR 611.93.

(b) *Halibut fishing.* Regulations governing the conservation and management of Pacific halibut are set forth at 50 CFR part 301.

(c) *Domestic fishing for groundfish.* Regulations governing the conservation and management of groundfish in the EEZ of the Gulf of Alaska and the Bering Sea and Aleutian Islands area are set forth at 50 CFR parts 672 and 675, respectively, and at 50 CFR part 620.

§ 676.13 Permits.

(a) *General.* (1) In addition to the permit and licensing requirements prescribed at 50 CFR 301.3, 672.4, and 675.4, all fishing vessels that harvest IFQ sablefish or halibut must have on board:

(i) A copy of an IFQ permit that specifies the regulatory area and vessel category in which sablefish or halibut may be harvested by the IFQ permit holder and the amount of each species that may be harvested during the current IFQ fishing season; and

(ii) An original IFQ card issued by the Regional Director.

(2) All persons that receive IFQ sablefish or halibut from the person(s) that harvest the fish must possess a registered buyer permit. Persons that sell directly to the public (e.g., dockside sales) or otherwise transfer IFQ sablefish or halibut that they catch to other than a registered buyer also must possess a registered buyer permit.

(b) *Issuance.* (1) IFQ permits and cards will be renewed or issued annually by the Regional Director to each person with approved QS for IFQ sablefish or halibut allocated in accordance with § 676.20 of this part. Each IFQ permit issued by the Regional Director will identify the permitted person and specify the amount of sablefish or halibut that person may harvest from a specified area using fixed gear and a vessel of a specified vessel category. Each IFQ card issued by the Regional Director will display an IFQ permit number and the individual authorized by the IFQ permit holder to land IFQ sablefish or halibut for debit against the permit holder's IFQ.

(2) Registered buyer permits will be renewed or issued annually by the Regional Director to persons that have a registered buyer application approved by the Regional Director.

(c) *Duration.* (1) An IFQ permit authorizes the person identified on the permit to harvest IFQ sablefish or halibut from a specified area at any time during the fishing year for which it is issued until the amount harvested is equal to the amount specified on the permit, or until it is revoked, suspended, or modified under 15 CFR part 904 (Civil Procedures). An IFQ card authorizes the individual identified on the card to land IFQ sablefish or halibut for debit against the specified IFQ permit until the card expires, or is revoked, suspended, or modified under 15 CFR part 904 (Civil Procedures), or canceled on request of the IFQ permit holder.

(2) A registered buyer permit authorizes the person identified on the permit to receive or make an IFQ landing by an IFQ permit or card holder at any time during the fishing year for which it is issued until the registered buyer permit expires, or is revoked, suspended, or modified under 15 CFR part 904 (Civil Procedures).

(d) *Alteration.* No person may alter, erase, or multilate any IFQ permit or card or registered buyer permit issued under this section. Any such permit or card that has been intentionally altered, erased, or mutilated is invalid.

(e) *Transfer.* The IFQ permits issued under this section are not transferable except as provided under § 676.21 of this part. The IFQ cards and registered buyer permits issued under this section are not transferable.

(f) *Inspection.* (1) A copy of any IFQ permit issued under this section must be carried on board the vessel used by the permitted person to harvest IFQ halibut or sablefish at all times that such fish are retained on board. An individual that is issued an IFQ card must remain on board the vessel used to harvest IFQ halibut or sablefish with that card until all such fish are landed, and must present a copy of the IFQ permit and the original IFQ card for inspection on request of any authorized officer or registered buyer.

(2) A legible copy of the original registered buyer permit must be present at the location of an IFQ landing, and must be made available for inspection on request of any authorized officer.

(g) *Permit sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR part 904.

§ 676.14 Recordkeeping and reporting.

In addition to the recordkeeping and reporting requirements specified in 50 CFR parts 301, 672, and 675, all

registered buyers and all persons that hold IFQ for sablefish or halibut are responsible for the completion of the following reports, as applicable.

(a) *Prior notice of IFQ landing.* The Alaska Region, NMFS, must be notified by the operator of the vessel making an IFQ landing no less than 6 hours before landing IFQ sablefish or halibut, unless permission to commence an IFQ landing within 6 hours of notification is granted by an authorized enforcement officer. Such notices of IFQ landings must be made to the toll-free telephone number specified on the IFQ permit between the hours of 06:00 and 24:00 Alaska local time. The notice must include the name and location of the registered buyer(s) to whom the IFQ sablefish and halibut will be landed and the anticipated date and time of landing.

(b) *IFQ landing report.* All sablefish and halibut harvested with fixed gear, including sablefish and halibut that the IFQ holder does not intend to sell, must be landed and reported by an individual who possesses an IFQ card to a person holding a valid registered buyer permit. Registered buyers must report all IFQ sablefish and halibut landed in the manner prescribed on the registered buyer permit within 6 hours after all such fish are landed and prior to shipment of such fish or departure of the delivery vessel from the landing site.

(1) IFQ landings may be made only between the hours of 06:00 and 18:00 Alaska local time unless permission to land at a different time is granted in advance by a NMFS enforcement officer. An IFQ landing may continue after this time period if it was started during the period.

(2) All IFQ landings and all fish retained onboard the vessel making an IFQ landing are subject to verification, inspection, and sampling by authorized law enforcement officers or observers.

(3) Information contained in a complete IFQ landing report shall include the date, time, and location of the IFQ landing; the names and permit numbers of the IFQ card holder and registered buyer; the product type landed; and the fish product weight of sablefish and halibut landed.

(c) *Shipment Report.* All registered buyers, other than those conducting dockside sales, must report all shipments or transfers of IFQ sablefish and halibut. A Shipment Report must be submitted for any shipment or transfer of IFQ sablefish and halibut to any location other than the IFQ landing location. Such reports must be submitted to the NMFS, Alaska Region, prior to shipment or transfer, in a manner prescribed on the registered buyer permit. Shipment Reports must specify the species and product type being shipped, the number of shipping units, fish product weight, the name of the shipper and receiver, the name and address of the consignee and consignor, the mode of transportation, and the intended route.

(1) Shipments of IFQ sablefish and halibut from a registered buyer to a destination within the United States may not commence until the Shipment Report is received by the Alaska Region, NMFS.

(2) A copy of the Shipment Report or a bill of lading that contains the same information must accompany the shipment to all points of sale in Alaska and to the first point of sale outside Alaska.

(d) *Dockside sales.* As used in this paragraph, "dockside sales" mean the transfer of IFQ sablefish or halibut directly to consumers or to persons who will sell the fish to consumers. A person holding a valid IFQ permit and IFQ card may conduct dockside sales of IFQ sablefish or halibut, providing that the person also holds a valid registered buyer permit. Dockside sales must be reported in the manner prescribed in paragraph (b) of this section before any fish are sold, transferred, or removed from the immediate vicinity of the vessel with which they were harvested. A receipt that includes the date of sale or transfer, the registered buyer permit number, and the fish product weight of the sablefish or halibut transferred must be issued to all persons receiving IFQ sablefish or halibut through dockside sales.

(e) *Transshipment.* (1) Transshipment of IFQ sablefish or halibut between the vessel that harvested such fish and another vessel is prohibited unless one of the vessels has a registered buyer on board and is capable of transmitting the required IFQ landing reports.

(2) In addition to the requirements of paragraph(e)(1) of this section, transshipment of processed IFQ sablefish or halibut between vessels may be conducted only after providing notice of such transshipment no less than 24 hours prior to commencement of the transfer, and only within the boundaries of a primary port listed in § 676.17 of this part

(f) A copy of all reports and receipts required by this section must be retained by registered buyers and be made available for inspection by an authorized officer for a period of 3 years.

§ 676.15 Vessel and gear identification

Regulations pertaining to vessel and gear markings and limitations are set forth in 50 CFR 301.16, 672.24, and 675.24.

§ 676.16 General prohibitions.

In addition to the prohibitions specified in §§ 620.7, 672.7, and 675.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Submit inaccurate information on any report, application, or statement required under this part;

(b) Retain sablefish or halibut caught with fixed gear without an IFQ card in the name of the individual on board and a valid IFQ permit;

(c) Except as provided at § 676.17 of this part, retain sablefish or halibut caught with fixed gear on a vessel in excess of the total amount of unharvested IFQ, applicable to the vessel category and area in which the vessel is operating, and that is currently held by all IFQ card holders onboard the vessel;

(d) Possess, buy, sell, or transport IFQ sablefish or halibut taken or landed in violation of any provision of this part;

(e) Make an IFQ landing without an IFQ card in the name of the individual making the landing;

(f) Possess on a vessel or land IFQ sablefish concurrently with sablefish caught in State internal waters or while sport fishing;

(g) Discard Pacific cod or rockfish that are taken incidental to the harvest of IFQ sablefish or halibut unless Pacific cod or rockfish are required to be discarded under §§ 676.20 or 675.20 of this chapter;

(h) Transfer QS or IFQ (other than by inheritance or operation of law) without the prior written approval of the Regional Director;

(i) Retain on any one vessel more IFQ sablefish or halibut than are authorized under § 676.21 of this part;

(j) Land IFQ sablefish or halibut other than directly to (or by) a registered buyer;

(k) Discard sablefish or halibut caught with fixed gear from any catcher vessel when any IFQ card holder on board holds unused sablefish or halibut IFQ for that vessel category and the area in which the vessel is operating, unless discard of halibut is required under 50 CFR 301.12, or discard of sablefish is required under 50 CFR 672.20 or 675.20, or discard of halibut or sablefish is required under §§ 676.22(h) or 676.24 of this part;

(l) Make an IFQ landing without prior notice of landing and before 6 hours after such notice, except as provided at § 676.14(a) of this part;

(m) Sell or otherwise transfer catcher vessel IFQ except as provided at § 676.21 of this part.

(n) Use IFQ to harvest sablefish or halibut with any gear other than fixed gear;

(o) Use IFQ assigned to one vessel category and area to harvest sablefish or halibut in a different vessel category or area;

(p) Participate in a Western Alaska CDQ program in violation of § 676.25 of this part, submit information that is false or inaccurate with a CDP application or request for an amendment, or to exceed a CDQ as defined at § 676.11 of this part; and

(q) Violate any other provision of this part.

§ 676.17 Facilitation of enforcement and monitoring.

In addition to the requirements of §§ 620.8 and 676.14 of this chapter, an IFQ landing must comply with the provisions described in this section.

(a) *Vessel clearances.* Any person that makes an IFQ landing at any location other than in the State of Alaska must be a registered buyer, obtain a written clearance of the vessel on which the IFQ halibut or sablefish are transported to the IFQ landing location, and provide an estimated weight of IFQ sablefish and halibut on board to the clearing officer. Clearance must be obtained prior to departing waters in or adjacent to the State of Alaska.

(1) Any person requesting a vessel clearance must have valid IFQ and registered buyer permits, IFQ that is equal to or greater than all IFQ sablefish and halibut on board, and must report the intended date, time, and location of IFQ landing.

(2) Any person granted a vessel clearance must submit an IFQ landing report, required under § 676.14 of this part, for all IFQ sablefish, halibut and products thereof that are on board the vessel at the first landing of any fish from the vessel.

(3) A vessel seeking clearance is subject to inspection of all fish, log books, permits, and other documents on board the vessel, at the discretion of the clearing officer.

(4) Vessel clearances will be issued only by NMFS enforcement officers at any of the following primary ports in Alaska [geographic location descriptions reserved]:

Akutan	Kodiak
Cordova	Pelican
Craig	Petersburg
Dutch Harbor/ Unalaska	St. Paul
Excursion Inlet	Sand Point
Homer	Seward
Ketchikan	Sitka
King Cove	Yakutat

(b) *Overages and underages.* Any person allocated IFQ must not harvest halibut or sablefish using fixed gear in any amount greater than the amount indicated on that person's current IFQ permit. Any person that harvests IFQ halibut or sablefish should hold sufficient unused IFQ for the harvest before beginning a fishing trip. Any IFQ halibut or sablefish that is landed in excess of a specified IFQ will be considered an "IFQ overage." In addition to any penalties that may be assessed for exceeding an IFQ, the Regional Director will deduct an amount equal to the overage from IFQ allocated in the year following determination of the overage. This overage adjustment to the annual IFQ allocation will be specific to each regulatory area for which an IFQ is calculated, and will apply to any person to whom the affected IFQ is allocated in the year following determination of an overage. In addition, the landed value of overages of the amount specified on the IFQ permit of 5 percent or more shall be subject to forfeiture. Unharvested amounts of IFQ less than 5 percent of the amount specified on a IFQ permit for any year, area, and vessel category will be re-allocated to the subsequent year for that area and vessel category, and will apply to any person to whom the affected IFQ is allocated in the subsequent year. Unharvested amounts of IFQ in any year or area that are 5 percent or more of the amount specified on a IFQ permit will not be reallocated.

§ 676.18 Penalties.

Any person committing, or a fishing vessel used in the commission of, a violation of the Magnuson Act or Halibut Act or any regulation issued under the Magnuson Act or Halibut Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson Act or Halibut Act, to part 621 of this chapter, to 15 CFR part 904 (Civil Procedures), and to other applicable law.

Subpart C—Individual Fishing Quota Management Measures

§ 676.20 Individual allocations.

The Regional Director shall annually divide the total allowable catch of halibut and sablefish that is apportioned to the fixed gear fishery pursuant to 50 CFR 301.10, 672.20, and 675.20, minus the CDQ reserve, among qualified halibut and sablefish quota share holders, respectively.

(a) *Initial allocation of quota share (QS).* The Regional Director shall initially assign to qualified persons halibut and sablefish fixed gear fishery QS that are specific to regulatory areas and vessel categories.

(1) *Qualified person.* As used in this section, a "qualified person" means a "person," as defined in § 676.11 of this part, who owned a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any regulatory area in any QS qualifying year. A person may be a qualified person also if it leased a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any halibut or groundfish reporting area in any QS qualifying year. A person who owns a vessel cannot be a qualified person during the same time period that another person leased the vessel and made legal landings of halibut or sablefish harvested with fixed gear. Qualified persons, or their successor-in-interest, must exist at the time of their application for QS. A former partner of a dissolved partnership or a former shareholder of a dissolved corporation who would otherwise qualify as a person may apply for QS in proportion to his interest in the dissolved partnership or corporation.

(i) A QS qualifying year is 1988, 1989, or 1990.

(ii) Evidence of vessel ownership shall be limited to U.S. Coast Guard documentation or registration by a State agency.

(iii) Evidence of a vessel lease shall be limited to a written vessel charter demise, or Federal income tax documents indicating that a person had responsibility for payment of crew because of a lease agreement, or a notarized statement from the vessel owner and lease holder attesting to the existence of a vessel lease agreement at any time during the QS qualifying years. Evidence of a vessel lease must identify the leased vessel and indicate the name of the lease holder and the period of time during which the lease was in effect.

(iv) Evidence of ownership interest in a dissolved partnership or corporation shall be limited to corporate documents (e.g., articles of incorporation or written contracts) between the persons involved in such businesses, or notarized statements signed by each interested person and specifying proportions of interest.

(v) As used in this section, a "legal landing of halibut or sablefish" means halibut and sablefish that were harvested and landed in compliance with State and Federal regulations in existence at the time of the landing. Evidence of legal landings shall be limited to documentation of State or Federal catch reports that indicate the amount of halibut or sablefish harvested, the regulatory area in which it was caught, the vessel and gear type

used to catch it, and the date of harvesting, landing, or reporting. Halibut and sablefish must have been harvested within any regulatory area, with fixed gear, to qualify as a landing for purposes of this paragraph. Sablefish harvested within Prince William Sound, or under a State of Alaska limited entry program, will not be considered as harvested from a regulatory area.

(2) *Vessel categories.* Vessel categories include:

(i) Category A—freezer vessels of any length;

(ii) Category B—catcher vessels greater than 60 feet (18.3 meters) in length overall;

(iii) Category C—catcher vessels less than or equal to 60 feet (18.3 meters) in length overall for sablefish, or catcher vessels greater than 35 feet (10.7 meters) but less than or equal to 60 feet (18.3 meters) for Pacific halibut; and

(iv) Category D—catcher vessels that are less than or equal to 35 feet (10.7 meters) in length overall for Pacific halibut.

(b) *Calculation of initial QS.* The Regional Director shall calculate the halibut QS for any qualified person in each regulatory area based on that person's highest total landings of halibut in each regulatory area for any 5 years of the 7-year halibut QS base period 1984 through 1990. The Regional Director shall calculate the sablefish QS for any qualified person in each regulatory area based on that person's highest total landings of sablefish in each area for any 5 years of the 6-year sablefish QS base period 1985 through 1990. The sum of all halibut QS for a regulatory area will be the halibut QS pool for that area. The sum of all sablefish QS for a regulatory area will be the sablefish QS pool for that area. Each QS calculation will be modified to accommodate the Western Alaska Community Development Program prescribed at § 676.25 of this part.

(c) *Assignment of QS to vessel categories.* Each qualified person's QS will be assigned to a vessel category based on the length of vessel(s) in which that person made fixed gear landings of groundfish or halibut in the most recent calendar year during the period 1985 through September 25, 1991, and the product type landed.

(1) A qualified person's QS will be assigned to vessel category "A" if, at any time during their most recent calendar year of participation, that person's vessel processed any groundfish or halibut caught with fixed gear.

(2) A qualified person's QS will be assigned to vessel category "B" if, at any time during their most recent year of participation, that person's vessel was greater than 60 feet (18.3 meters) in length overall and did not process any groundfish or halibut caught with fixed gear.

(3) A qualified person's sablefish QS will be assigned to vessel category "C" if, at any time during their most recent year of participation, that person's vessel was less than or equal to 60 feet (18.3 meters) in length overall and did not process any groundfish or halibut caught with fixed gear.

(4) A qualified person's halibut QS will be assigned to vessel category "C" if, at any time during their most recent year of participation, that person's vessel was less than or equal to 60 feet (18.3 meters), but greater than 35 feet (10.7 meters), in length overall and did not process any groundfish or halibut caught with fixed gear.

(5) A qualified person's halibut QS will be assigned to vessel category "D" if, at any time during their most recent year of participation, that person's vessel was less than or equal to 35 feet (10.7 meters) in length overall and did not process any groundfish or halibut caught with fixed gear.

(6) If a person qualified for QS in more than one vessel category in their most recent calendar year of participation during the period January 1, 1988, through September 25, 1991, then their QS will be assigned to each vessel category in proportion to the harvests of halibut or sablefish made using vessels in each category in the most recent calendar year.

(7) If a person qualifies for halibut QS in one vessel category and qualifies for sablefish in a different vessel category in their most recent calendar year of participation during the period January 1, 1988, through September 25, 1991, then all QS for both species will be assigned to the vessel category in which the most recent landing of groundfish was made in the most recent calendar year.

(8) As used in this section, "participation" means the harvesting of any groundfish or halibut using fixed gear.

(d) *Application for initial QS.* Upon request, the Regional Director shall make available to any person an application form for an initial allocation of QS. The application form sent to the person requesting a QS allocation will include all data on that person's vessel ownership and catch history of halibut and sablefish that can be released to the applicant under current State and Federal confidentiality rules, and that are available to the Regional Director at the time of the request. An application period of no less than 180 days will be specified by notice in the **Federal Register** and other information sources that the Regional Director deems appropriate. Complete applications received by the Regional Director will be acknowledged. An incomplete application will be returned to the applicant with specific kinds of information identified that are necessary to make it complete.

(1) Halibut and sablefish catch history, vessel ownership or lease data, and other information supplied by an applicant will be compared with data compiled by the Regional Director. If additional data presented in an application are not consistent with the data compiled by the Regional Director, the applicant will be notified of insufficient documentation. The applicant will have 90 days to submit corroborating documents in support of their application, to resubmit a revised application, or to file an appeal. All applicants will be limited to one opportunity to provide corroborating documentation or a revised application in response to a notice of insufficient documentation.

(2) Applications with uncontested data may be approved by the Regional Director. Based on these data, Regional Director will calculate each applicant's initial halibut and sablefish QS, as provided at paragraph (b) of this section, for each regulatory area, respectively, and will add each applicant's halibut and sablefish QS for an area to the respective QS pool for that area.

(3) Any applicant's catch history or other data that are contested by the Regional Director or another applicant will prevent approval of QS amounts that would result from the contested data until discrepancies are resolved. Amounts of QS that have not been approved by the Regional Director will not be added to the QS pool for any area until they are approved.

(e) *Appeal of initial allocation.* Initial allocation of QS must be appealed, pursuant to § 676.26 of this part, within 90 days of the date of issuing the allocation or the date of denial of a resubmitted application as provided in paragraph (d) of this section.

(f) *Annual allocation of IFQ.* The Regional Director shall assign halibut or sablefish IFQs to each person holding approved halibut or sablefish QS, respectively. Each assigned IFQ will be specific to a regulatory area and vessel category, and will represent the maximum amount of halibut or sablefish that may be harvested from the specified area and by the person to whom it is assigned during the specified fishing year, unless the IFQ assignment is changed by the Regional Director

within the fishing year because of an approved transfer or because all or part of the IFQ is sanctioned for violated rules of this part.

(1) The annual allocation of IFQ to any person (person p) in any regulatory area (area a) will be equal to the product of the total allowable catch of halibut or sablefish by fixed gear for that area (after adjustment for purposes of the Western Alaska Community Development Quota Program) and the quotient of that person's QS divided by the QS pool for that area. Overages will be subtracted from a person's IFQ and underages (up to 5 percent) will be added pursuant to § 676.17 of this part. Expressed algebraically, the annual IFQ allocation formula is as follows:

IFQ_{pa}=[(fixed gear TAC_a – CDQ reserve) × (QS_{pa}/QS $pool_a$)] + underage up to 5% of IFQ_{pa} of preceding year, or – overage of IFQ_{pa} of preceding year.

(2) For purposes of calculating IFQs for any fishing year, the amount of a person's QS and the amount of the QS pool for any area will be the amounts on record with the Alaska Region, NMFS, as of noon, Alaska local time, on December 31 of the previous year.

(3) The Regional Director shall issue to each QS holder, pursuant to § 676.13 of this part, an IFQ permit specifying the maximum amount of halibut and sablefish that may be harvested in a specified regulatory area and vessel category. Such IFQ permits will be sent by certified mail to each QS holder at the address on record for that person after the beginning of each fishing year but prior to the start of the annual IFQ fishing season.

§ 676.21 Transfer of QS and IFQ.

Any person that is allocated QS or IFQ, either initially or by subsequent approved transfer, may sell, lease, or otherwise transfer all or part of its QS or IFQ to another person only in accordance with the transfer restrictions and procedures described in this section.

(a) The QS and IFQ assigned to any vessel category are not transferable to any other vessel category.

(b) The QS assigned to any catcher vessel category may be transferred only to individuals who are U.S. citizens and IFQ crew members.

(c) Any person that receives title to QS by inheritance or court order must notify the Regional Director of such a transfer. Any person that receives QS in this manner may not use the IFQ resulting from it to harvest halibut or sablefish with fixed gear until such use is ratified by the Regional Director.

(d) Transfers of catcher vessel QS approved by the Regional Director cannot be made subject to a lease or any condition of repossession or resale by the person transferring QS except as provided for leasing in paragraph (f) of this section or by court order. The Regional Director may request a copy of the sales contract or other terms and conditions of transfer between two persons as supplementary information to the transfer application.

(e) *Transfer procedure.* The transfer of QS or IFQ shall not be effective for purposes of harvesting halibut or sablefish until a transfer application is approved by the Regional Director and new IFQ permits are issued to the persons receiving and relinquishing the transferred QS or IFQ. The Regional Director shall provide a transfer application form to any person on request. Approved transfers will change the affected persons' QS or IFQ accounts on the date of approval, and the persons applying for transfer will be provided new IFQ permits by mail posted on the date of approval unless another communication mode is requested on the transfer application. Disapproved transfer applicants will be similarly informed of the reason for disapproval.

(1) *Transfer approval criteria.* A transfer of QS or IFQ by operation of law requires notification of the Regional Director pursuant to paragraph (c) of this section, but does not otherwise require approval of the Regional Director. Use of such IFQ will not be ratified, and any other transfer of QS or IFQ will not be approved, until the Regional Director has determined that:

(i) The person who is applying to transfer QS or IFQ is the same person that received the QS or IFQ either by initial allocation or subsequent approved transfer, or is a person that legally acquired the QS through inheritance or by court order;

(ii) The person applying to receive transferred QS or IFQ has a transfer eligibility application, containing currently accurate information, approved by the Regional Director;

(iii) The proposed transfer will not cause the person that would receive QS to exceed the use limits specified at § 676.22 of this part;

(iv) Both persons have their notarized signatures on the transfer application form, unless the transfer is by inheritance or by operation of law;

(v) There are not fines dues and owing or outstanding permit sanctions resulting from Federal fishery violations involving either person;

(vi) The person applying to receive transferred QS or IFQ currently exists; and

(vii) Other pertinent information requested on the transfer application form has been supplied to the satisfaction of the Regional Director.

(2) *Transfer eligibility application.* All persons who apply to receive QS or IFQ by transfer must have a transfer eligibility application, containing currently accurate information, approved by the Regional Director. The Regional Director shall provide a transfer eligibility application form to any person on request. Applicants may request either an Individual IFQ Crew Member Eligibility Application or a Corporate/Partnership or Other Entity Eligibility Application. Persons that are not individuals must resubmit a transfer eligibility application if there is a change in their corporate structure or membership as described in § 676.22 of this part. Approved transfer eligibility applicants will be informed by certified mail of their transfer eligibility. A disapproved transfer eligibility application will be returned to the applicant with an explanation of why the application was disapproved. Reasons for disapproval of a transfer eligibility application may include, but are not limited to:

(i) Less than 150 days of experience at sea working as an IFQ crew member;

(ii) Lack of compliance with the U.S. citizenship or corporate ownership requirements specified by the definition of "person" at § 676.2 of this part;

(iii) An incomplete eligibility application; or

(iv) Fines due and owing or outstanding permit sanctions resulting from Federal fishery violations.

(f) *Leasing QS (applicable until [insert date three years after the effective date of this section]).* A person may transfer by lease no more than 10 percent of its total catcher vessel QS for any regulatory area to another person for any fishing year. A QS lease shall not have effect until approved by the Regional Director. The Regional Director shall change and reissue IFQ permits affected by an approved QS lease transfer. Approved QS leases must comply with all transfer requirements specified in this section. Applications to transfer by lease QS that is under sanction will not be approved. All lease transfers will cease to have effect on December 31 of the year in which they are approved.

§ 676.22 Limitations on use of QS and IFQ.

(a) The QS or IFQ specified for one regulatory area and one vessel category shall not be used in a different area or vessel category, except as provided in paragraph (i)(3) of this section.

(b) Halibut IFQ cannot be used to harvest halibut with any gear other than the fishing gear authorized at 50 CFR 301.16. Sablefish fixed gear IFQ cannot

be used to harvest sablefish with trawl gear in any regulatory area, or with pot-and-line or pot-and-longline gear in any regulatory area of the Gulf of Alaska.

(c) Any individual who harvests halibut or sablefish with fixed gear must:

(1) Have a valid IFQ card;

(2) Be aboard the vessel at all times during fishing operations; and

(3) Sign any required fish ticket or IFQ landing report for the amount of halibut or sablefish that will be debited against the IFQ associated with the IFQ card.

(d) The requirement of paragraph (c) of this section for an individual IFQ card holder to be on board during fishing operations and to sign the IFQ landing report may be waived in the event of extreme personal emergency involving the IFQ user during a fishing trip. The waiving of these requirements shall apply only to IFQ halibut or sablefish retained on the fishing trip during which such emergency occurred.

(e) *Sablefish QS use.* No person, individually or collectively, may use an amount of sablefish QS greater than 1 percent of the combined total sablefish fixed gear TAC for the Gulf of Alaska and Bering Sea and Aleutian Islands regulatory areas, unless the amount in excess of 1 percent was received in the initial allocation of QS. In the regulatory area east of 140° east longitude, no person, individually or collectively, may use more than 1 percent of the total amount of QS for this area, unless the amount in excess of 1 percent was received in the initial allocation of QS.

(f) *Halibut QS use.* Unless the amount in excess of the following limits was received in the initial allocation of halibut QS, no person, individually or collectively, may use more than:

(1) One percent (0.01) of the total amount of halibut QS for regulatory area 2C;

(2) One-half percent (0.005) of the total amount of halibut QS for regulatory areas 2C, 3A, and 3B, combined; and

(3) One-half percent (0.005) of the total amount of halibut QS for regulatory areas A4, 4B, 4C, 4D, and 4E, combined.

(g) If transferred QS would result in an IFQ that is greater than the use limits specified in paragraphs (e) and (f) of this section, then any IFQ permit based on such QS will be issued for only the maximum IFQ allowed under these limits.

(h) *Vessel limitations.* No vessel may be used, during any fishing year, to harvest:

(1) More than one-half percent (0.005) of the combined total catch limits of halibut for regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, except that, in regulatory area 2C, no vessel may be used to harvest more than one-half percent (0.005) of the halibut catch limit for this area; and

(2) More than 1 percent (0.01) of the combined fixed gear TAC of sablefish for the Gulf of Alaska and Bering Sea and Aleutian Islands regulatory areas, except that, in the regulatory area east of 140° west longitude, no vessel may be used to harvest more than 1 percent of the fixed gear TAC of sablefish for this area.

(3) Persons who received an approved IFQ allocation of halibut or sablefish in excess of these limitations may catch and retain all of their IFQ with a single vessel.

(i) *Use of catcher vessel IFQ.* In addition to the requirements of paragraph (c) of this section, catcher vessel IFQ cards must be used only by the individual who holds the QS from which the associated IFQ is derived, except as provided in paragraphs (d) and (i)(1) of this section.

(1) An individual who receives an initial allocation of catcher vessel QS does not have to be on board and sign IFQ landing reports if this individual owns the vessel on which IFQ sablefish or halibut are harvested, and is represented on the vessel by a master employed by the individual who received the initial allocation of QS.

(2) The exemption provided in paragraph (i)(1) of this section does not apply to individuals who receive an initial allocation of catcher vessel QS for halibut in regulatory area 2C or sablefish IFQ in the regulatory area east of 140° west longitude, and this exemption is not transferable.

(3) Catcher vessel IFQ may be used on a freezer vessel, provided no frozen or otherwise processed fish products are on board at any time during a fishing trip on which catcher vessel IFQ is being used. A catcher vessel may not land any IFQ species as frozen or otherwise processed product. Processing of fish on the same vessel that harvested those fish using catcher vessel QS is prohibited.

(j) *Use of catcher vessel IFQ by corporations and partnerships.* A corporation or partnership that receives an initial allocation of catcher vessel QS may use the IFQ resulting from that QS and any additional QS acquired within the limitations of this section, provided the corporation or partnership owns the vessel on which its IFQ is used, and it is represented on the vessel by a master employed by the corporation or partnership that received the initial allocation of QS. This provision is not transferable.

(1) A corporation or partnership, except for a publicly held corporation, that receives an initial allocation of catcher vessel QS must cease using its IFQ under the provisions of paragraph (1) of this section on the effective date of a change in the corporation or partnership from that which existed at the time of initial allocation.

(2) For purposes of this paragraph, "a change in the corporation or partnership" means the addition of any new shareholder(s) or partner(s), except that a court appointed trustee to act on behalf of a shareholder or partner who becomes incapacitated is not a change in the corporation or partnership.

(3) The Regional Director must be notified of a change in a corporation or partnership as defined in this paragraph within 15 days of the effective date of the change. The effective date of change, for purposes of this paragraph, is the date on which the new shareholder(s) or partner(s) may realize any corporate liabilities or benefits of the corporation or partnership.

(4) Catcher vessel QS and IFQ resulting from that QS held in the name of a corporation or partnership that changes, as defined in this paragraph, must be transferred to an individual, as prescribed in § 676.21 of this part, before it may be used at any time after the effective date of the change.

§ 676.23 Management areas.

The requirements and provisions of this subpart govern the harvest of all halibut caught with fixed gear in any regulatory area, as defined at § 676.11 of this part, and the harvest of all sablefish caught with fixed gear in any regulatory area, as defined at § 676.11 of this part, except that sablefish harvested within Prince William Sound, or under a State of Alaska limited entry program, will not be considered as harvested from a regulatory area.

§ 676.24 IFQ fishing season.

(a) The fishing season(s) for IFQ halibut are established by the International Pacific Halibut Commission and codified at 50 CFR 301.7.

(b) Directed fishing for sablefish using fixed gear in any regulatory area may be conducted at any time during the period from 00:01 Alaska Standard Time on March 1 through 24:00 Alaska Standard Time on November 30.

§ 676.25 Western Alaska Community Development Quota.

(a) *Halibut CDQ Program.* The Secretary will annually withhold from

IFQ allocation the proportions of the halibut catch limit that are specified in this paragraph for use as a community development quota (CDQ). Portions of the CDQ for each regulatory area may be allocated for the exclusive use of eligible western Alaska communities in accordance with Community Development Plans (CDPs) approved by the Governor of the State of Alaska in consultation with the Council and approved by the Secretary. The proportions of the halibut catch limit annually withheld for purposes of the CDQ program, exclusive of issued QS, are as follows for each area:

(1) In the IPHC regulatory area 4B, 20 percent of the annual halibut quota shall be made available for the halibut CDQ program to eligible communities physically located in or proximate to this regulatory area. For the purposes of this section, "proximate to" an IPHC regulatory area means within 10 nautical miles from the point where the boundary of the IPHC regulatory area intersects land.

(2) In regulatory area 4C, 50 percent of the halibut quota shall be made available for the halibut CDQ program to eligible communities physically located in regulatory area 4C.

(3) In regulatory area 4D, 30 percent of the halibut quota shall be made available for the halibut CDQ program to eligible communities located in or proximate to IPHC management areas 4D and 4E.

(4) In regulatory area 4E, 100 percent of the halibut quota shall be made available for the halibut CDQ program to communities located in or proximate to IPHC management area 4E. A trip limit of 6,000 pounds will apply to halibut CDQ harvesting in IPHC management area 4E.

(b) *Sablefish CDQ Program.* In the notices of proposed and final harvest limit specifications required under § 675.20(a) of this chapter, the Secretary will specify 20 percent of the fixed gear allocation of sablefish in each Bering Sea and Aleutian Islands subarea, as provided under § 675.24(c) of this chapter, as a sablefish CDQ reserve, exclusive of issued QS. Portions of the CDQ reserve for each subarea may be allocated for the exclusive use of specific western Alaska communities in accordance with CDPs approved by the Governor in consultation with the Council and approved by the Secretary. The Secretary will allocate no more than 12 percent of the total CDQ for all subareas combined to any one applicant with an approved CDQ application.

(c) *State of Alaska CDQ responsibilities.* Prior to granting approval of a CDP recommended by the Governor, the Secretary shall find that the Governor developed and approved the CDP after conducting at least one public hearing, at an appropriate time and location in the geographical area concerned, so as to allow all interested persons an opportunity to be heard. The hearing(s) on the CDP do not have to be held on the actual documents submitted to the Governor under paragraph (d) of this section. Such hearing(s) must cover the substance and content of the proposed CDP in such a manner that the general public, and particularly the affected parties, have a reasonable opportunity to understand the impact of the CDP. The Governor must provide reasonable public notice of hearing date(s) and location(s). The Governor must make available for public review, at the time of public notice of the hearing, all State materials pertinent to the hearing(s). The Governor must include a transcript or summary of the public hearing(s) with the Governor's recommendations to the Secretary in accordance with § 676.25. At the same time this transcript is submitted to the Secretary, it must be made available, upon request, to the public. The public hearing held by the Governor will serve as the public hearing for purposes of Secretarial review under § 676.25(e).

(d) *CDP application.* The Governor, after consultation with the Council, shall include in his written findings to the Secretary recommending approval of a sablefish/halibut CDP, that the CDP meets the requirements of these regulations, the Magnuson Act, the Alaska Coastal Management Program, and other applicable law. At a minimum, the submission must discuss: the determination of a community as eligible; information regarding community development, including goals and objectives; business information; and a statement of the managing organization's qualifications. For purposes of this section, an eligible community includes any community or group of communities that meets the criteria set out in paragraph (f)(2) of this section. Applications for a CDP must include the following information:

(1) *Community development information.* Community development information includes:

(i) the goals and objectives of the CDP;

(ii) The allocation of sablefish or halibut CDQ requested for each subarea defined at § 675.2;

(iii) The length of time that CDQ allocation will be necessary to achieve the goals and objectives of the CDP, including a project schedule with measurable milestones for determining progress;

(iv) The number of individuals to be employed under the CDP, the nature of the work provided, the number of employee-hours anticipated per year, and the availability of labor from the applicant's community(ies);

(v) Description of the vocational and educational training programs that a CDQ allocation under the CDP would generate;

(vi) Description of existing fishery-related infrastructure and how the CDP would use or enhance existing harvesting or processing capabilities, support facilities, and human resources;

(vii) Description of how the CDP would generate new capital or equity for the applicant's fishing or processing operations;

(viii) A plan and schedule for transition from reliance on the CDQ allocation under the CDP to self-sufficiency in fisheries; and

(ix) A description of short- and long-term benefits to the applicant from the CDQ allocation.

(2) *Business information.* Business information includes:

(i) Description of the intended method of harvesting the CDQ allocation, including the types of products to be produced; amounts to be harvested; when, where, and how harvesting is to be conducted; and names and permit numbers of the vessels that will be used to harvest the CDQ allocation;

(ii) Description of the target market for sale of products and competition existing or known to be developing in the target market;

(iii) Description of business relationships between all business partners or with other business interests, if any, including arrangements for management, audit control, and a plan to prevent quota overages. For this section, business partners means all individuals who have a financial interest in the CDQ project;

(iv) Description of profit sharing arrangements;

(v) Description of all funding and financing plans;

(vi) Description of joint venture arrangements, loans, or other partnership arrangements, including the distribution of proceeds among the parties;

(vii) A budget for implementing the CDP;

(viii) A list of all capital equipment;

(ix) A cash flow and break-even analysis; and

(x) A balance sheet and income statement, including profit, loss, and return on investment on all business ventures within the previous 12 months by the applicant and/or the managing organization.

(3) *Statement of managing organization's qualifications.* (i) Statement of the managing organization's qualifications includes information regarding its management structure and key personnel, such as resumes and references;

(ii) Description of how the managing organization is qualified to manage a CDQ allocation and prevent quota overages; For purposes of this section, a qualified managing organization means any organization or firm that would assume responsibility for managing all or part of the CDP and would meet the following criteria:

(A) Documentation of support from each community represented by the applicant for a CDP through an official letter of support approved by the governing body of the community;

(B) Documentation of a legal relationship between the CDP applicant and the managing organization that clearly describes the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement; and

(C) Demonstration of management and technical expertise necessary to carry out the CDP as proposed by the CDP application.

(e) *Secretarial review and approval of CDPs.* (1) Upon receipt by the Secretary of the Governor's recommendation for approval of proposed CDPs, the Secretary will review the record to determine whether the community eligibility criteria and the evaluation criteria set forth in paragraph (f) of this section have been met. The Secretary shall then approve or disapprove the Governor's recommendation within 45 days of its receipt. In the event of approval, the Secretary shall notify the Governor and the Council in writing that the Governor's recommendations for CDPs are consistent with the community eligibility conditions and evaluation criteria under paragraph (f) of this section and other applicable law, including the Secretary's reasons for approval. Publication of the decision, including the percentage of the sablefish and halibut CDQ reserves allocated to each CDP, and the availability of the findings, will appear in the **Federal Register**. The Secretary will allocate no more than 12 percent of the sablefish CDQ reserve to any one applicant with an approved CDP. A community may not concurrently receive more than one halibut CDQ or more than one sablefish CDQ, and only one application for each type of CDP per community will be accepted.

(2) If the Secretary finds that the Governor's recommendations for halibut and sablefish CDQ allocations are not consistent with the criteria set forth in these regulations and disapproves the Governor's recommendations, the Secretary shall so advise the Governor and the Council in writing, including the reasons therefor. Publication of the decision will appear in the **Federal Register.** The CDP applicant may submit a revised CDP to the Governor for submission to the Secretary. Review by the Secretary of a revised CDP application will be in accordance with the provisions set forth in this section.

(f) *Evaluation criteria.* The Secretary will approve the Governor's recommendations for halibut and sablefish CDPs if the Secretary finds the CDPs are consistent with the requirements of these regulations, including the following:

(1) Each CDP application is submitted in compliance with the application procedures described in § 676.25(d);

(2) Prior to approval of a CDP recommended by the Governor, the Secretary will review the Governor's findings as to how each community meets the following criteria for an eligible community in (f)(2) (i), (ii), (iii), and (iv). The Secretary has determined that the communities listed in Table 1 at § 676.25 meet these criteria; however, communities that may be eligible to submit CDPs and receive halibut or sablefish CDQs are not limited to those listed in this table. For a community to be eligible, it must meet the following criteria:

(i) The community must be located within 50 nautical miles from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the westernmost of the Aleutian Islands, or on an island within the Bering sea. A community is not eligible if it is located on the Gulf of Alaska coast of the North Pacific Ocean even if it is within 50 nautical miles of the baseline of the Bering Sea;

(ii) The community must be certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Pub. L. 92–203) to be a native village;

(iii) The residents of the community must conduct more than one-half of their current commercial or subsistence fishing effort in the waters surrounding the community; and

(iv) The community must not have previously developed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI, except if the community can show that benefits from an approved CDP would be the only way to realize a return from previous investments. The communities of Unalaska and Akutan are excluded under this provision.

(3) Each CDP application demonstrates that a qualified managing organization will be responsible for the harvest and use of the CDQ allocation pursuant to the CDP;

(4) Each CDP application demonstrates that its managing organization can effectively prevent exceeding the CDQ allocation; and

(5) The Governor has found for each recommended CDP that:

(i) The CDP and the managing organization are fully described in the CDQ application, and have the ability to successfully meet the project milestones and schedule;

(ii) The managing organization has an adequate budget for implementing the CDP, and that the CDP is likely to be successful;

(iii) A qualified applicant has submitted the CDP application and that the applicant and managing organization have the support of each community participating in the proposed CDQ project as demonstrated through an official letter approved by the governing body of each such community; and

(iv) The following factors have been considered:

(A) The number of individuals from applicant communities who will be employed under the CDP, the nature of their work, and career advancement;

(B) The number and percentage of low-income persons residing in the applicant communities, and the economic opportunities provided to them through employment under the CDP;

(C) The number of communities cooperating in the application; and

(D) The relative benefits to be derived by participating communities and the specific plans for developing a self-sustained fisheries economy.

(6) For purposes of this paragraph, "qualified applicant" means:

(i) A local fishermen's organization from an eligible community, or group of eligible communities, that is incorporated under the laws of the State of Alaska, or under Federal law, and whose board of directors is composed of at least 75 percent resident fishermen of the community (or group of communities) that is (are) making an application; or

(ii) A local economic development organization incorporated under the laws of the State of Alaska, or under Federal law, specifically for the purpose of designing and implementing a CDQ project, and that has a board of directors composed of at least 75 percent resident fishermen of the community (or group

of communities) that is (are) making an application.

(7) For the purpose of this paragraph, "resident fisherman" means an individual with documented commercial or subsistence fishing activity who maintains a mailing address and permanent domicile in the community and is eligible to receive an Alaska Permanent Fund dividend at that address.

(8) If a qualified applicant represents more than one community, the board of directors of the applicant must include at least one member from each of the communities represented.

(g) *Monitoring of CDPs.* (1) Approved CDPs for halibut and sablefish are required to submit annual reports to the Governor by June 30 of the year following CDQ allocation. At the conclusion of a CDP, a final report will be required to be submitted to the Governor by June 30 of the final year of CDQ allocation. Annual reports for CDPs will include information describing how the CDP has met its milestones, goals, and objectives. The Governor will submit an annual report to the Secretary on the final status of all concluding CDPs, and recommend whether allocations should be continued for these CDPs that are not yet concluded. The Secretary must notify the Governor in writing of receipt of the Governor's annual report, accepting or rejecting the annual report and the Governor's recommendations on the continuance of CDPs. If the Secretary rejects the Governor's annual report, the Secretary will return the Governor's annual report for revision and resubmission to the Secretary.

(2) If an applicant requests an increase in an existing halibut or sablefish CDQ allocation, the applicant must submit a new CDP application for review by the Governor and approval by the Secretary as described in paragraphs (d) and (e) of this section.

(3) Amendments to a CDP will require written notification to the Governor and subsequent approval by the Governor and the Secretary before any change in a CDP can occur. The Governor may recommend to the Secretary that the request for an amendment be approved. The Secretary may notify the Governor in writing of approval or disapproval of the amendment. The Governor's recommendation for approval of an amendment will be deemed approved if the Secretary does not notify the Governor in writing within 30 days of receipt of the Governor's recommendation. If the Secretary determines that the CDP, if changed, would no longer meet the criteria under paragraph (f) of this section, or if any of the requirements under § 675.27 would not be met, the Secretary shall notify the Governor in writing of the reasons why the amendment cannot be approved.

(i) For the purposes of this section, amendments are defined as substantial changes in a CDP, including, but not limited to, the following:

(A) any change in the relationships among the business partners;

(B) Any change in the profit sharing arrangements among the business partners, or any change to the budget for the CDP; or

(C) Any change in management structure of the project, including any change in audit procedures or control.

(ii) Notification of an amendment to a CDP shall include the following information:

(A) Description of the proposed change, including specific pages and text of the CDP that will be changed if the amendment is approved by the Secretary; and

(B) Explanation of why the change is necessary and appropriate. The explanation should identify which findings, if any, made by the Secretary in approving the CDP may need to be modified if the amendment is approved.

(h) *Suspension or termination of a CDP.* (1) The Secretary may, at any time, partially suspend, suspend, or terminate any CDP, upon written recommendation of the Governor setting out his reasons, that the CDP recipient is not complying with these regulations. After review of the Governor's recommendation and reasons for a partial suspension, suspension, or termination of a CDP, the Secretary will notify the Governor in writing of approval or disapproval of the Governor's recommendation. In the event of approval of the Governor's recommendation, the Secretary will publish an announcement in the **Federal Register** that the CDP has been partially suspended, suspended, or terminated along with reasons therefor.

(2) The Secretary also may partially suspend, suspend, or terminate any CDP at any time if the Secretary finds a recipient of a CDQ allocation pursuant to the CDP is not complying with these regulations or other regulations or provisions of the Magnuson Act or other applicable law or if the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area is amended. Publication of suspension or termination will appear in the **Federal Register** along with the reasons therefor.

(3) The annual report for multi-year CDPs, which is required under paragraph (g) of this section, will be used by the Governor to review each CDP to determine if the CDP and CDQ allocation thereunder should be continued, decreased, partially suspended, suspended, or terminated under the following circumstances:

(i) If the Governor determines that the CDP will successfully meet its goals and objectives, the CDP may continue without any Secretarial action.

(ii) If the Governor determines that a CDP has not successfully met its goals and objectives, or appears unlikely to become successful, the Governor may submit a recommendation to the secretary that the CDP be partially suspended, suspended, or terminated. The Governor must set out in writing his reasons for recommending suspension or termination of the CDP. After review of the Governor's recommendation and reasons therefor, the Secretary will notify the Governor in writing of approval or disapproval of his recommendation. The Secretary would publish a notice in the **Federal Register** that the CDP has been suspended or, with reasons therefor, terminated.

(i) *Compensation for CDQ allocations.* (1) The Regional Director will compensate persons that receive a reduced halibut IFQ in regulatory areas 4B, 4C, 4D, or 4E because of the halibut CDQ program by adding halibut QS from IPHC management areas 2C, 3A, and 3B. This compensation of halibut QS from areas 2C, 3A, and 3B will be allocated in proportion to the amount of halibut IFQ foregone due to the CDQ allocation authorized by this section.

(2) The Regional Director will compensate persons that receive a reduced sablefish IFQ in any subarea of the Bering Sea and Aleutian Islands management area because of the sablefish CDQ program by taking sablefish QS from the Federal reporting areas of the Gulf of Alaska and allocating it in proportion to the loss suffered by persons in the BSAI area. Such additional compensation of sablefish QS will be allocated in proportion to the amount of sablefish IFQ foregone due to the CDQ allocation authorized by this section.

(j) *Limitation on use of CDQ.* (1) Directed fishing for halibut with fixed gear under an approved CDQ allocation may begin on the effective date of the allocation, except that CDQ fishing may occur only during the fishing periods specified in 50 CFR 301.7. Directed fishing of sablefish with fixed gear under an approved CDQ allocation may begin on the effective date of the allocation, except that CDQ directed fishing may occur only during the IFQ fishing season specified in § 676.24 of this part.

(2) *CDQ permits.* The Regional Director will issue a CDQ permit to the

managing organization responsible for carrying out an approved CDQ project A CDQ permit will authorize the managing operation identified on the permit to harvest halibut or sablefish with fixed gear from a specified area. A copy of the CDQ permit must be carried on any fishing vessel operated by or for the managing organization, and be made available for inspection by an authorized officer. Each CDQ permit will be non-transferable and will be effective for the duration of the CDQ project or until revoked, suspended, or modified.

(3) *CDQ cards.* The Regional Director will issue CDQ cards to all individuals named on an approved CDP application Each CDQ card will identify a CDQ permit number and the individual authorized by the managing organization to land halibut or sablefish for debit against its CDQ allocation.

(4) No person may alter, erase, or mutilate any CDQ permit or card or registered buyer permit issued under this section. Any such permit or card that has been intentionally altered, erased, or mutilated will be invalid.

(5) All landings of halibut or sablefish harvested under an approved CDQ project must be landed by a person with a registered buyer permit, and reported as prescribed in § 676.14 of this part.

Table 1.—Communities Initially Determined To Be Eligible To Apply for Community Development Quotas

Aleutian Region

1 Atka
2. False Pass
3. Nelson Lagoon
4. Nikolski
5. St. George
6. St. Paul

Bering Strait

1. Brevig Mission
2. Diomede/Inalik
3. Elim
4. Gambell
5. Golovin
6. Koyuk
7. Nome
8. Savoonga
9. Shaktoolik
10. St. Michael
11. Stebbins
12. Teller
13. Unalakleet
14. Wales
15 White Mountain

Bristol Bay

1. Alegnagik
2. Clark's Point
3. Dillingham
4. Egegik
5. Ekuk
6. Manokotak
7 Naknek
8. Pilot Point/Ugashik
9. Port Heiden/Meschick
10. South Naknek
11. Sovonoski/King Salmon
12. Togiak
13. Twin Hills

Southwest Coastal Lowlands

1. Alakanuk
2. Chefornak
3. Chevak
4. Eek
5. Emmonak
6. Goodnews Bay
7. Hooper Bay
8. Kipnuk
9. Kongiganak
10. Kotlik
11. Kwigillingok
12. Mekoryuk
13. Newtok
14. Nightmute
15. Platinum
16. Quinhagak
17. Scammon Bay
18. Sheldon's Point
19. Toksook Bay
20. Tununak
21. Tuntutuliak

§ 676.26 Appeal procedure. [Reserved]

[FR Doc. 92–29193 Filed 11–27–92; 4:57 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 233
Thursday, December 3, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Loan Guarantees to Israel; Investment Opportunity

The Government of Israel (the "GOI") wishes to select managing underwriters for the structuring and sale of U.S. Agency for International Development ("A.I.D.")-guaranteed loans. The A.I.D.-guaranteed loans have been authorized by Public Law 102–391, and are being provided in connection with Israel's extraordinary humanitarian effort to resettle and absorb immigrants into Israel from the republics of the former Soviet Union, Ethiopia and other countries.

The legislation authorizes the guaranty by A.I.D. of up to $10 billion principal amount of loans over the next five years, with a maximum of $2 billion in loans, offered in one or more tranches, to be guaranteed in each of the five fiscal years. This Notice is in connection with the GOI's selection of managing underwriters for the initial offering contemplated to be made under the five-year authorization.

The GOI would like to receive proposals from interested underwriters on an expedited basis. Proposals must be submitted in accordance with a Request for Proposals available from the GOI, by December 23, 1992. For information regarding the submission of proposals, please contact Mr. Eliahu Zir-Zitouk, Chief Fiscal Officer, Ministry of Finance of the Government of Israel, 350 Fifth Avenue, New York, NY 10118 (fax: 212/736–2759).

To accomplish the GOI's objectives, the GOI's lead manager must at a minimum:

1. Perform and discuss with the GOI and its financial advisor a complete quantitative analysis of the cash flows generated by the proposed structures and proposed pricing of securities;
2. Obtain any credit ratings applicable to the proposed sale transaction;
3. Complete the underwriting of all securities offered for sale on a negotiated basis;
4. Establish and maintain a post-sale trading market for the securities;
5. Coordinate all activities relating to the proposed financing plan with the GOI and its financial advisor; and
6. Assist the GOI in securing the services of any necessary service providers such as trustee or fiscal agent, accountant, printer, etc.

Selection of underwriters and the terms of the loans are initially subject to the individual discretion of the GOI and thereafter subject to approval by A.I.D. In order to be eligible for selection as a managing underwriter, an institution must be a member of the National Association of Securities Dealers, and otherwise meet the legal requirements for serving in such role.

The full repayment of the loans will be guaranteed by A.I.D. To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 226 of the Foreign Assistance Act of 1961, as amended. Disbursements under the loans will be subject to certain conditions required of the GOI by A.I.D. as set forth in agreements between A.I.D. and the GOI.

Additional information regarding A.I.D.'s responsibilities in this guaranty program can be obtained from the undersigned: Room 3328, New State, Washington, DC. 20523–0030, Telephone: 202/647–6504.

Dated: November 30, 1992.

Michael G. Kitay,

Assistant General Counsel, Agency for International Development.

[FR Doc. 92–29369 Filed 12–2–92; 8:45 am]
BILLING CODE 6116–01–M

DEPARTMENT OF COMMERCE

Acting Affecting Export Privileges; Reza Panjtan Amiri, et al.

In the matter of: Reza Panjtan Amiri, also known as Ray Amiri, individually with addresses at 13165 E. Essex Drive, Cerritos, California 90701, and, c/o Pars Hafezeh, Mirdamadi Avenue, Mohsseni Square, Farnaz Street, Second Avenue, No. 5, Suite 31, Tehran, Iran, and doing business as Ray Amiri Computer Consultants, also known as RACC and CCC Inc. with addresses at 1411 5th Street, Suite 303, Santa Monica, California 90401 and Heinrichstrasse 9–11, D–6000 Frankfurt 1, Germany, respondents.

Renewal of Order Temporarily Denying Export Privileges

Procedural Background

On November 12, 1991, I issued an order temporarily denying the export privileges of Reza Panjtan Amiri, also know as Ray Amiri (Amiri), Mohammad Danesh, also know as Don Danesh (Danesh), and Ray Amiri Computer Consultants (RACC) [1] for 180 days. 56 FR 58553 (November 20, 1991). This order was issued pursuant to the provisions of section 788.19 of the Export Administration Regulations (currently codified at 15 CFR parts 768–99 (1991) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. § 2401–20 (1991)) (Act).[2]

On May 8, 1992, I granted a short extension of the TDO at the request of the parties. 57 FR 21057 (May 18, 1992). On May 29, 1992, after considering the submissions of the parties, I renewed the TDO for 180 days. 57 FR 24242 (June 8, 1992).[3] the TDO is set to expire on November 25, 1992, unless again renewed.

On November 6, 1992, the Office of Export Enforcement of this Department (the Department), requested that the order be renewed again as to Amiri.[4] Amiri has filed no opposition to the request for renewal.

Factual Background

The factual basis for the previous issuance and renewal of the TDO is set forth in the Federal Register notices

[1] RACC is a sole proprietorship of Amiri. Accordingly, all references to Amiri include RACC.

[2] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) invoked the International Emergency Economic Powers Act (50 U.S.C. 1701–06 (1991)), continuing in effect the Regulations, and, to the extent permitted by law, the provisions of the Act.

[3] Amiri appealed the renewal of the TDO. That appeal is now with the United States courts. No decision has yet been issued in that appeal.

[4] The Department has not requested a renewal of the TDO as to Danesh since, among other things, he is currently incarcerated. Accordingly, the TDO as to Danesh will expire on November 25, 1992.

identified above. Since the last renewal, however, events have reinforced the factual basis for TDO. Amiri has failed to appear at several dates for his sentencing on the export-related charges to which he pled guilty. He is currently a fugitive. Additionally, the Department states that it has more evidence that Amiri has not abided by the terms of the TDO and that his protestations on this subject in the prior renewal process were false. The Department also submitted evidence that Amiri has renamed his company as CCC Inc.[5]

Discussion

The Department continues to make a sufficient showing that a temporary denial order is necessary in the public interest to prevent an imminent violation of the Act and the Regulations. The prior evidence on this point is enhanced by Amiri's fugitive status and the evidence of this attempts to circumvent the TDO.

The Department's evidence supports a conclusion that Amiri has a disdain for the Act and the Regulations. Consequently, renewal of the order as to Amiri and RACC is appropriate.

Findings

Based on the record in this matter, I find that an order temporarily denying the export privileges of Reza Panjtan Amiri, also known as Ray Amiri, individually and doing business as Ray Amiri Computer Consultants, also known as RACC and CCC Inc., is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with Amiri, Ray Amiri Computer Consultants, RACC, CCC Inc. in goods and technical data subject to the Act and the Regulations, in order to reduce the substantial likelihood that Amiri, Ray Amiri Computer Consultants, RACC, and CCC Inc. will continue to engage in activities that are in violation of the Act and the Regulations.

Order

It is hereby ordered:

I. All outstanding individual validated licenses in which Amiri, Ray Amiri Computer Consultants, RACC, or CCC Inc. appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Amiri's, Ray Amiri Computer Consultants's, RACC's, and CCC Inc.'s privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. For a period of 180 days beginning on November 26, 1992, Reza Panjtan Amiri, also known as Ray Amiri, individually with addresses at 13165 E. Essex Drive, Cerritos, California 90701, and c/o Pars Hafezeh, Mirdamadi Avenue, Mohsseni Square, Farnaz Street, Second Avenue, No. 5, suite 31, Tehran, Iran, and doing business as Ray Amiri Computer Consultants, also known as RACC and CCC Inc., with addresses at 1411 5th Street, suite 303, Santa Monica, California 90401, and Heinrichstrasse 9–11, D–6000 Frankfurt 1, Germany, and all their successors, assignees, officers, partners, representatives, agents, and employees, hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in section 788.3(c), any person, firm, corporation, or business organization related to Amiri and/or his companies, Ray Amiri Computer Consultants, RACC, and CCC Inc., by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided by section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. In accordance with the provisions of Section 788.19(e) of the Regulations, any respondent may, at any time, appeal this temporary denial order by filing with the Office of the Administrative Law Judge/Export Control, U.S. Department of Commerce, room H-4017, 14th Street and Constitution Avenue NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective on November 26, 1992, and shall remain in effect for 180 days.

VII. In accordance with the provisions of section 788.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served on each respondent and this order shall be published in the Federal Register

[5] Although Amiri renamed his company, he continues to engage in business as RACC as well. Accordingly, the renewed TDO identifies both RACC and CCC Inc. as denied parties. In addition, a new address for RACC has been published by the Department.

Dated: November 25, 1992.

Douglas E. Lavin,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 92–29331 Filed 12–2–92; 8:45 am]

BILLING CODE 3510–DT–M

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

Firm name	Address	Date petition accepted	Product
Twin Disc, Incorporated	1328 Racine Street, Racine, WI 53403–1758.	10/19/92	Transmission, clutches, marine transmissions, torque converters and parts of transmission equipment.
Advanced Cerametrics Incorporated	245 N. Main Street, Lambertville, NJ 08530.	10/21/92	Textile wear parts and high temperature superconductors.
Kroy, Incorporated	14555 North Hayden Road, Scottsdale, AZ 85260.	10/21/92	Printing cartridges for labeling machines.
US Aprons, Inc.	1200 Jackson Street, Sidney, NE 69162 .	10/21/92	Aprons, hats and bow ties.
ADL Circuits, Incorporated	1081 Shary Circle, Concord, CA 94518 ..	11/02/92	Electronics—printed circuit boards.
BNZ Materials, Inc.	6901 South Pierce Street, #260 Littleton, CO 80123.	11/02/92	Calcium silicate and fiber cement, inculating board, fire brick and counter tops.
Jersey Specialty Co., Inc.	Burgess Place, P.O. Box 248, Wayne, NJ 07470.	11/03/92	Misc.—Coaxial cable.
Lake States Footwear, Inc.	10620 N. Port Washington Road, Mequon, WI 53092.	11/03/92	Footwear—houseslippers.
Zenith Controls, Inc.	830 West 40th Street, Chicago, IL 60609	11/04/92	Transfer switches, parallel switching gear, contactors and timers/clocks.
Hallmark Circuits, In	5330 Eastgate Mall Road, San Diego, CA 92121–2899.	11/04/92	Electronics—printed circuit boards.
Nel Frequency Controls, Inc	357 Beloit Street, Burlington, WI 53105 ..	11/05/92	Misc.—quartz crystals.
Kerr Millwork & Manufacturing, Inc	801 Main Street, P.O. Box 461, Lockwood, MO 65682.	11/05/92	Wood Products—wood doors.
4–Ace Enterprises Company	9931 Harwin Drive, Suite 146, Houston, TX 77036.	11/05/92	Personal safety products—back and wrist supports.
Clifton Steel Company	8950 Dutton Drive, Twinsburg, OH 44087	11/10/92	Parts for asphalt paving, wear plates and crusher liners and structural steel.
Horizon Sportswear, Inc.	200 Horton, Elkmont, AL 35620	11/10/92	Apparel—jackets for premium incentive industries and baseball caps.
Nordon Tool & Mold, Inc	691 Exchange Street, Rochester, NY 14608.	11/10/92	Plastic roller assemblies for copiers and plastic shock absorbers for the automobile.
Recordex Manufacturing, Inc.	Anderson & E. Main St., Box 848, Swainsboro, GA 30401.	11/10/92	High-speed audio tape duplication equipment, tape recorders, and reformatters.
Key Tronic Corporation	4424 N. Sullivan Road, Spokane, WA 99214–0687.	11/10/92	Computer keyboards, video game cartridges & keyboard accessories.
Hemstreet Tool and Die, Inc.	599 South Bay Road, North Syracuse, NY 13212.	11/10/92	Metal parts for AC compressors and special machinery for cathode-ray picture tubes.
North Gratiot Rose Gardens, Inc.	44701 N. Gratiot, Mt. Clemens, MI 48043	11/13/92	Flowers—cut flowers and flower buds of a kind suitable for bouquets.
Micro Hybrid Dimensions, Inc.	230 South Siesta Lane, Tempe, AZ 85281–3027.	11/16/92	Electronics—thick film hybrid circuits.
Frequency Electronics, Inc.	55 Charles Lindbergh Boulevard, Mitchel Field, NY 11553.	11/16/92	Electronics—Osillators, microwave semiconductors, time and frequency generating instruments.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: November 25, 1992.

Kathleen W. Lawrence,

Deputy Assistant Secretary for Program Operations.

[FR Doc. 92–29293 Filed 12–2–92; 8:45 am]

BILLING CODE 3510–24–M

National Oceanic and Atmospheric Administration

Endangered Species; Permits

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

ACTION: Notice of receipt of application for scientific research permit (P770#64).

Notice is hereby given that the National Marine Fisheries Service (NMFS), Coastal Zone and Estuarine Studies Division, Northwest Fisheries Science Center, 2725 Montlake Boulevard East, Seattle, Washington, 98112–2097, has applied in due form for a Permit to take endangered and threatened species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations

governing endangered fish and wildlife permits (50 CFR part 217–227).

The applicant requests authorization to conduct the following two studies: (1) Miller Sands/Pillar Rock in-water restoration (Habitat Restoration Study) and (2) Modification of beach nourishment dredged-material disposal sites in the lower Columbia River to reduce juvenile salmonid stranding (Stranding Study). Listed fish affected would include up to 1 juvenile snake river sockeye (*Oncorhynchus nerka*), 36 juvenile spring/summer snake river chinook (*O. tshawytscha*) and 9 juvenile fall chinook (*O. tshawytscha*). These fish would be captured in a small purse seine. Handling mortality is expected to be low (0.2%). These numbers are requested for each year over a four year period.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., room 8268, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application ar summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated: November 20, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–29261 Filed 12–2–92; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Notice of Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 5,025,796 (Serial No. 7–278,355), titled "Apparatus and Methods for Determining in Vivo Response to Thermal Stimulation in an Unrestrained Subject," to Stoelting Co., having a place of business in Wood Dale, IL. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent No. 5,025,796 describes a method for discerning a peripherally-mediated response to thermal simulation caused by a drug in an unrestrained subject whereby it can be determined if the drug acts substantially like a placebo. Also disclosed is a method of determining the response to thermal stimulation caused by a drug in an unrestrained subject by determining the difference between the drug withdrawal latency time period and the placebo withdrawal latency time period. Also disclosed is a method of discerning a peripheral response to thermal stimulation in an unrestrained subject by comparing the withdrawal latency time period of one site with that of a second site.

The availability of Patent No. 5,025,796 for licensing was published in the **Federal Register**, Vol. 56 No. 220, p. 57877 (November 14, 1991). A copy of the above-identified patent may be purchased from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231 for $3.00 (payable by check or money order).

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

[FR Doc. 92–29332 Filed 12–2–92; 8:45 am]

BILLING CODE 3510–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

FTS2000 Program

AGENCY: Defense Information Systems Agency, DOD.

ACTION: Notice.

SUMMARY: Sources Sought. The Federal Telecommunication System 2000 (FTS2000) Program was established as a result of a contract award to AT&T and Sprint to provide inter-city telecommunications services for Federal agencies. Legislation making the use of FTS2000 mandatory for Federal agencies requires the Administrator of General Services to report to Congress by March 1, 1993 whether the FTS2000 procurement is producing prices that allow the Government to satisfy its requirements in the most cost effective manner. The Inter-Agency Management Council (IMC) acts as an advisory body to the Administrator of General Services for FTS2000. A subcommittee of the IMC chaired by Dennis W. Groh has been formed to provide oversight for a cost comparison study. The services of two private industry vendors have been acquired to support the project. The vendors have determined that it would be valuable to obtain input regarding inter-city telecommunications costs from private providers of telecommunications services. They are especially interested in input from a variety of business communities—retail; banking; medical; travel; universities—telecommunications. The information obtained will be used for comparison purposes with the most recent prices that the Government has negotiated for FTS2000. The committee is specifically seeking information such as contract duration, volume discounts, minimum dollar requirements and features that are uniquely tailored for specific customers.

All information received will be treated as confidential. All persons who have access to the information have signed required non-disclosure certifications to insure the proprietary nature of any information received. Any information should be provided by December 1, 1992. To participate in the survey, call Laurna Hansen, Institute of Defense Analyses, at (703) 845–2204.

DATE: November 16, 1992.

ADDRESSES: DECCO/RA, Scott AFB IL 62225–8300.

FOR FURTHER INFORMATION CONTACT: Dennis Groh, (618) 256–9100.

Dated: November 30, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–29311 Filed 12–2–92; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Submarine Service Life; Meeting

ACTION: Cancellation of Meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Submarine Service Life scheduled for 30 November, 1992, as published in the Federal Register (Vol. 57, No. 201, Page 47455, Friday, October 16, 1992, FR Doc. 92–25138) has been cancelled.

Dated: November 30, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–29310 Filed 12–2–92; 8:45 am]

BILLING CODE 3810–01–M

Defense Advisory Committee on Service Academy Athletic Programs

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Service Academy Athletic Programs is scheduled to be held from 8:30 a.m. to 4:30 p.m. on February 17, 1993 and from 8:30 a.m. to 11:30 a.m. on February 18, 1993. The meeting will be held in room 301, Rickover Hall, United States Naval Academy, Annapolis, Maryland. The purpose of the meeting is to review the administration of athletic programs at the US Military, Naval and Air Force Academies. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Captain Mark A. Zamberlan, Accession Policy, Office of the Assistant Secretary of Defense (Force Management and Personnel), room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9272, no later than February 1, 1993.

Dated: November 30, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–29309 Filed 12–2–92; 8:45 am]

BILLING CODE 3810–01–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting, Public Hearing and Public Briefings

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, December 9, 1992. The hearing will be part of the Commission's business meeting which is open to the public and scheduled to begin at 1 p.m. in the Lord Delaware Room of the Harbour League Club at 800 Hudson Square, Camden, New Jersey.

An informal conference session among the Commissioners and staff will be open for public observation at 9:30 a.m. in the Directors Room of the Harbour League Club and will include discussions on the status of Pennsylvania water-conserving plumbing fixtures' legislation; Commission-States' monitoring contracts and Scenic Rivers water quality protection proposed regulations.

The subjects of the hearing will be as follows:

Proposed Amendments to Administrative Manual—Rules of Practice and Procedure Relating to Commission Review of Electric Generation or Cogeneration Projects

Notice was given in the October 8, 1992 issue of the **Federal Register** that the Commission would hold a public hearing on December 9, 1992 to receive comments on a proposed amendment to its Rules of Practice and Procedure in relation to review of electric generation or cogeneration projects. The amendment would add a new category of projects for review under Section 3.8 of the Compact: Electric generating or cogenerating facilities designed to consumptively use in excess of 100,000 gallons per day of water during any 30-day period.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Holdover Project: Perkiomen Township D–91–43 CP.* An application for approval of a ground water withdrawal project to supply up to 4.3 million gallons (mg)/30 days of water to the applicant's distribution system from new Well No. 4, and to increase the existing withdrawal limit of 1.95 mg/30 days from all wells to 7.8 mg/30 days. The project is located in Perkiomen Township, Montgomery County in the Southeastern Pennsylvania Ground Water Protected Area.

2. *Baldwin Hardware Corporation D–87–32 Renewal.* An application for the renewal of a ground water withdrawal project to supply up to 15.13 mg/30 days of water to the applicant's manufacturing facility, and also as part of the applicant's ground water decontamination program, from Well Nos. 1–5. Approximately 0.5 million gallons per day (mgd) of effluent will continue to be discharged to the Schuylkill River after treatment by the applicant's existing industrial wastewater treatment plant. Commission approval on August 5, 1987 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 15.13 mg/30 days. The project is located in the City of Reading, Berks County, Pennsylvania.

3. *Lehighton Water Authority D–89–93 CP.* A surface water withdrawal project that entails the withdrawal of up to 1.6 mgd from a proposed intake on the Lehigh River to be located just upstream of the Borough of Lehighton in Mahoning Township, Carbon County, Pennsylvania, and near the confluence of Long Run. The Authority will continue to serve Lehighton and Weissport Boroughs and portions of Mahoning and Franklin Townships, all in Carbon County. There will be a decrease of permitted withdrawal on Pine Run and Long Run from a total combined withdrawal of 2.2 mgd to 1.6 mgd; and the total combined withdrawal for all intakes, existing and proposed, limited to 1.6 mgd. The Authority's reservoirs and intake on Long Run are located approximately 2 miles upstream of the Long Run confluence with the Lehigh River in Franklin Township. The Authority's reservoir and intake on Pine Run are located just east of the Pennsylvania Turnpike Northeast Extension in Penn Forest Township near the northernmost tip of Franklin Township.

4. *Wrightstown Municipal Utilities Authority D–90–88 CP.* A sewage treatment plant (STP) upgrade project to provide advanced secondary treatment facilities at the applicant's existing 0.20 mgd capacity STP. The STP will continue to discharge treated effluent to North Run, a tributary of Crosswicks Creek, via the existing outfall structure. The STP is located in the Borough of Wrightstown, Burlington County, New Jersey.

5. *Borough of Alburtis D–91–42 CP.* An application for approval of a ground water withdrawal project to supply up to 2.25 mg/30 days of water to the applicant's distribution system from new Well No. 4, and to increase the existing withdrawal limit of 4.5 mg/30 days from all wells to 6.5 mg/30 days. The project is located in Alburtis Borough, Lehigh County, Pennsylvania.

6. *Exeter Township Municipal Authority D–92–3 CP.* A sewage treatment plant (STP) modification and expansion project that entails enlarging and converting the existing extended aeration process STP, rated at a 3.9 mgd average capacity, to an activated sludge process capable of treating 1.2 mgd, and construction of a new activated sludge STP to be operated in parallel to the existing STP at 5.9 mgd for a total expansion to 7.1 mgd. The expanded secondary STP project will continue to serve Exeter Township, Saint Lawrence Borough and a portion of Lower Alsace Township, all in Berks County, Pennsylvania. The treated effluent will continue to discharge to the Schuylkill River from both the existing outfall at 1.2 mgd and via a new outfall at 5.9 mgd. The new outfall will include a multiple port diffuser located approximately 300 feet upstream of the existing outfall.

7. *Circuit Foil USA D–92–21.* An application for approval of a proposed industrial wastewater treatment plant (IWTP) to treat approximately 48,000 gallons per day (gpd) of process wastewater generated by the applicant's metallic copper foil manufacturing operation. The existing IWTP (0.3 mgd) which currently discharges to an unnamed tributary of Mile Hollow Brook, will no longer be used by Circuit Foil USA, and the new IWTP will discharge to Crosswicks Creek. The proposed IWTP will provide an 80 percent reduction in the volume of waste water discharged due to process water recovery and recycle. The IWTP will be located just west of Route 130 and approximately 2000 feet northeast of the City of Bordentown's corporate limits, in the Township of Bordentown, Burlington County, New Jersey.

8. *Avondale Borough Sewer Authority D–92–45 CP.* A sewage treatment plant (STP) modification project to improve the quality of treated effluent at the applicant's existing 0.30 mgd secondary STP and to reduce hydraulic overloading. The average treatment capacity will remain at 0.30 mgd. The STP will continue to serve the Borough of Avondale and is located on the east bank of Indian Run, to which it discharges, approximately 300 feet above its confluence with East Branch White Clay Creek in the Borough of Avondale, Chester County, Pennsylvania.

9. *General Foods USA D–92–53.* An application for approval of a ground water withdrawal project to supply up to 23.0 mg/30 days of water to the applicant's industrial facility from existing Well Nos. 1, 2 and 3, and to increase the existing withdrawal limit from all wells of 13.608 mg/30 days to 23.0 mg/30 days. The project is located in the City of Dover, Kent County, Delaware.

10. *Stockertown Borough Sewage Treatment Plant D–92–71 CP.* A proposal to construct a new 86,500 gpd sewage treatment plant (STP) to serve the Borough of Stockertown. The STP will provide secondary biological treatment via facultative lagoons followed by a tertiary sand filter and ultraviolet disinfection prior to discharge to Little Bushkill Creek. The STP is located just west of Little Bushkill Creek approximately 1000 feet upstream of its confluence with Bushkill Creek, in Stockertown Borough, Northhapton County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

* * * * *

The Delaware River Basin Commission has scheduled public briefings on proposed revisions to the Delaware River Basinwide Drought Operations Plan.

The briefings will be held as follows:

December 9, 1992 at 4 p.m. at the Harbour League Club, 800 Hudson Square, Camden, New Jersey.

December 16, 1992 at 7 p.m. at Tusten Town Hall, Bridge Street (Route 52), Narrowsburg, New York.

December 17, 1992 at 7 p.m. at Bethlehem Town Hall, 10 East Church Street, Bethlehem, Pennsylvania.

The Commission's Flow Management Technical Advisory Committee has developed a revised plan which incorporates the additional 22.9 billion gallons of water supply storage to be provided by the Francis E. Walter Reservoir Modification Project. The revised plan is proposed to replace both the current basinwide and lower basin drought operating plans once the F.E. Walter modifications are in place.

With the modification of the F.R. Walter Reservoir and the recent completion of Merrill Creek Reservoir, the lower basin storage available for repelling salt water intrusion, control of water quality, flow maintenance and depletive water use makeup would more than double. This additional lower basin storage would provide additional water for salinity control in the Delaware Estuary, and would result in considerably fewer drought emergencies basinwide. The revised plan of operation would also result in reduced impacts to recreation at Beltsville, Blue Marsh and Nockamixon Reservoirs.

The public briefings will present discussions of the proposal's purposes, premises and specific operating criteria. The proposal is contained in a report entitled "Proposed Delaware River Basinwide Drought Operations Plan (Revised)", October 1992. Copies of this report will be available at the briefings, or by contacting Christopher Roberts, Public Information Officer at the Commission.

It is the Commission's intent to consider all comments received at the public briefings before proposing the adoption of revisions to the Commission's regulations. Public hearings on any proposed regulatory amendments will be scheduled following public notice by the Commission. Again, any adopted amendments would not become effective until the Water Reservoir modifications are completed. Contact: Christopher Roberts, Public Information Officer, at (609) 883–9500 X205.

Dated: November 24, 1992.

Susan M. Weisman,

Secretary.

[FR Doc. 92–29333 Filed 12–2–92; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.235Q]

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps; Transitional Rehabilitation Services for Handicapped Youth With Special Needs; Notice Extending the Closing Date for Transmittal of Applications for New Awards for Fiscal Year (FY) 1993

Deadline for Transmittal of Applications: The closing date for applications is extended from November 30, 1992 to December 21, 1992.

On September 21, 1992, the Department of Education published in the **Federal Register** (57 FR 43504, 43522, and 43524) a notice inviting applications under Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps—Transitional Rehabilitation Services for Handicapped Youth with Special Needs.

It has come to the Department's attention that the combined application package provided to potential applicants did not identify and include

the appropriate regulations for this competition. The correct regulations, 34 CFR part 376, include the criteria for evaluating applications and other requirements that differ significantly from the 34 CFR part 373 regulations cited in the application package. The regulations for 34 CFR part 376 will be sent to potential applicants who have already received the application package and will be inserted in the application package for future distribution.

The purpose of this notice is to extend the deadline date for transmittal of applications to enable potential applicants who may have received the incorrect regulations to have sufficient time to complete their proposals.

Deadline for Intergovernmental Review: February 19, 1993.

For Applications: Telephone: (202) 205–9343.

For Information Contact: Thomas Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 3315, Switzer Building, Washington, DC. 20202. Telephone: (202) 205–9796.

Program Authority: 29 U.S.C. 777a(c).

Dated: November 25, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–29285 Filed 12–2–92; 8:45 am]

BILLING CODE 4000–01–M

Meeting; National Assessment Governing Board

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: December 18, 1992.

TIME: 11 a.m. (e.s.t.)

LOCATION: 800 North Capitol Street, Suite 825, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the National assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Executive Committee of the National Assessment Governing Board will meet December 18, 1992 from 11 a.m. until 12:30 p.m. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The purpose of this meeting is to take action on the Nominations Committee's recommendations for filling the impending vacancy in the category of Governor or former Governor (Republican) in the Board membership. Also, the Committee will select the site of the November, 1993 meeting of the full Board.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: November 30, 1992.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 92–29346 Filed 12–2–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Financial Assistance Award to the University of Missouri

AGENCY: Morgantown Energy Technology Center (METC), U.S. Department of Energy (DOE).

ACTION: Notice of acceptance of an unsolicited financial assistance application for Grant award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(D) the DOE, Morgantown Energy Technology Center, gives notice of its plans to award a thirty-six month Grant to the University of Missouri, Rolla, Missouri in the amount of $185,000 per year.

FOR FURTHER INFORMATION CONTACT: Crystal A. Sharp, I07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone (304) 291–4386, Procurement Request No. 21–93MC29224.000.

SUPPLEMENTARY INFORMATION: The objective of this program is to develop a low cost solid oxide fuel cell interconnect material that sinters in the presence of the electrolyte and cathode. Three primary tasks have been identified to meet this objective. These tasks involve the synthesis of the powder, tape preparation, sintering and cosintering processing, and materials characterization.

Dated: November 25, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92–29345 Filed 12–2–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–196–000, et al.]

Boston Edison Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 25, 1992.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER93–196–000]

Take notice that on November 17, 1992, Boston Edison Company (Boston Edison) of Boston, Massachusetts, filed under the provisions of section 205 of the Federal Power Act a twenty-year contract (the Contract) under which Boston Edison will provide base-intermediate Contract Demand power and related energy to the Reading Municipal Light Department (RMLD). Boston Edison states that the new Contract supersedes Boston Edison's present FPC Electric Tariff, Volume No. 1 under which RMLD currently receives Contract Demand service.

Boston Edison, with RMLD's concurrence, requests an effective date of September 1, 1992, for the new Contract. This effective date is specified by the terms of the Contract.

The Contract provides for the continuation of the Contract Demand service previously furnished RMLD

under the Tariff but changes certain terms and conditions. The chief differences between the Tariff and Contract are that the Contract establishes a method and prohibits changes in the method for determining an annual fixed Demand Rate for the period September 1, 1992 through October 31, 2002, specifies the annual volumes of service to be provided during each year, provides a method of determining the Demand Rate on a cost of service basis in the period 2002–2012, and provides that the Contract is intended to remain in effect until October 31, 2012.

Boston Edison states that the filing has been posted and has been served upon the affected customer and the Massachusetts Department of Public Utilities.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Company of New York, Inc.

[Docket No. ER93–215–000]

Take notice that on November 18, 1992, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Rate Schedule and four Supplements constituting an agreement for the construction and operation of the East Fishkill Substation for the Power Authority of the State of New York (the "Authority"). Rate Schedule can be made effective as of December 6, 1983, Supplement No. 1 as of January 28, 1985, Supplement 2 as of March 11, 1985, Supplement No. 3 as of March 28, 1985 and Supplement No. 4 as of May 1, 1987.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Consolidated Edison Company of New York, Inc.

[Docket No. ER93–214–000]

Take notice that on November 18, 1992, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Rate Schedule and a Supplement constituting agreements for the construction, operation and maintenance of a 345 kV transmission line from Bowline Point to Ladentown for the benefit of Con Edison and Orange and Rockland Utilities, Inc. ("Orange & Rockland"). Con Edison has requested a waiver of notice requirements so that the Rate Schedule and Supplement can be made effective as of June 8, 1970.

Con Edison states that a copy of this filing has been served by mail upon Orange & Rockland.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Montana Power Company

[Docket No. ER93–216–000]

Take notice that on November 18, 1992, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 Service Schedule F–3 to Rate Schedule FERC No. 3, an "Interconnection Agreement between The Montana Power Company, Idaho Power Company and Utah Power & Light Company. Montana requests that the Commission (a) accept the Schedule for filing, to be effective on March 20, 1975; and (b) grant a waiver of notice pursuant to 18 CFR 35.11, so as to allow the filing of the Schedule less than 60 days prior to the date on which service under the Schedule is commenced.

A copy of the filing was served upon Idaho Power Company and PacifiCorp.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Puget Sound Power & Light Company

[Docket No. ER93–169–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, "Agreement for Cogeneration Project" between Puget and Texaco Refining and Marketing, Inc. (the Agreement), containing provisions for construction of facilities, power purchase by Puget or parallel operation of facilities. A copy of the filing was served upon Texaco Refining and Marketing, Inc.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Power & Light Company

[Docket No. ER93–168–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing information relating to service under Rate Schedule FERC No. 82 or construction, relocation, operation, maintenance or ownership of facilities by Puget or the United States Department of Navy (Navy). A copy of the filing was served upon the Navy.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of the notice.

7. Florida Power & Light Company

[Docket Nos. ER92–143–003 and EL92–21–000]

Take notice that on November 17, 1992, Florida Power & Light Company (FP&L) tendered for filing its compliance filing pursuant to the Commission's letter order issued on October 8, 1992 in the above-referenced dockets.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric Company

[Docket No. ER92–853–000]

Take notice that Louisville Gas and Electric Company (LG&E) and Southern Indiana Gas and Electric Company (SIGECO) by letter dated November 17, 1992, tendered for filing an amendment to their filing dated September 21, 1992. The original filing was the Seventh Supplemental Agreement to the interconnection agreement between SIGECO and LG&E.

The amendment responds to Commission staff's comments by revising certain prices charged to LG&E by SIGECO in certain rate schedules.

A copy of the amended filing was served upon the Kentucky Public Service Commission and the Indiana Utility Commission.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Northern Indiana Public Service Company

[Docket No. ER92–649–000]

Take notice that on November 19, 1992, Northern Indiana Public Service Company (NIPSCO) tendered for filing Amendment No. 3 to its filing which as made on June 17, 1992, in Docket No. ER92–649–000.

This filing was made in order to extend facilities to Indiana Municipal Power Agency's (IMPA) customer, Rensselaer, and to make available to them several new Service Schedules for their operations.

During staff's review of this filing, they have asked several questions about the Unscheduled Power Rate and the cost justification of the proposed rates.

This filing is being made to respond to staff's questions.

Copies of this filing have been served upon all of the parties and the Indiana Utility Regulatory Commission.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. The United Illuminating Company

[Docket No. ER93–201–000]

Take notice that on November 18, 1992, The United Illuminating Company (UI) filed a change in a short-term, coordination transaction involving the sale of capacity entitlements to Green Mountain Power Corporation (GMP). Under the original agreement, dated April 27, 1992, GMP was purchasing 10,000 KW of capacity through April 30, 1993. This amount will be increased to 15,000 KW for the period December 31, 1992 through March 31, 1993. No other terms of the original agreement have been changed.

Copies of the filing were mailed to GMP.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Philadelphia Electric Company

[Docket No. ER93–198–000]

Take notice that on November 18, 1992, Philadelphia Electric Company (PE) tendered for filing as an initial rate under section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, a Memorandum of Understanding—Maintenance and Repair of Delaware River Crossing ("Memorandum") between PE and Atlantic City Electric Company ("ACE") dated January 15, 1963, and two supplements thereto.

PE requests that the Commission allow this Memorandum to become effective as of January 1, 1963.

PE states a copy of this filing has been sent to ACE and will be furnished to the Pennsylvania Public Utility Commission and the Jersey Board of Regulatory Commissioners.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER93–208–000]

Take notice that on November 18, 1992, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Rate Schedule and Supplement constituting an agreement for the ownership, construction, operation and maintenance of the PJM Facilities for the benefit of Con Edison and Orange and Rockland Utilities, Inc. (Orange & Rockland). Con Edison has requested waiver of the notice requirements so that the Rate Schedule and Supplement can be made effective as of May 1, 1970 and December 12, 1972.

Con Edison states that a copy of this filing has been served by mail upon Orange & Rockland.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of New Hampshire

[Docket No. ER93–224–000]

Take notice that on November 18, 1992, Public Service Company of New Hampshire (PSNH) tendered for filing various interconnection agreements.

PSNH states that these filings are in response to the Commission's recent *Florida Power Corp.* order and the amnesty period established thereunder for interconnection-related agreements.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Louisville Gas and Electric Company

[Docket No. ER93–225–000]

Take notice that Louisville Gas and Electric Company (LG&E) on November 19, 1992, tendered for filing as an initial Rate Schedule on Interchange Agreement dated November 9, 1992 between LG&E and Oglethorpe Power Corporation (Oglethorpe), to replace the Power Sales Agreement between LG&E and Oglethorpe.

The Interchange Agreement establishes schedules for the sale of Power and Energy between LG&E and Oglethorpe. This Agreement contains Schedule A, Emergency Energy, Schedule B, Oglethorpe Power and Energy, Schedule C, Oglethorpe Delivery of Third Party Purchases, Schedule D, Louisville Power and Energy, and Schedule E, Louisville Delivery of Third Party Purchases.

A copy of the filing was served upon the Kentucky Public Service Commission.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. PacificCorp

[Docket No. ER92–471–004]

Take notice that PacifiCorp on November 16, 1992, tendered for filing, in compliance with the Commission's letter dated October 8, 1992, a compliance report showing the refunds forwarded to all of PacifiCorp's wholesale and wheeling customers which were due refunds as a result of the May 1, 1992 Settlement Agreement under Docket No. ER91–471–000.

Copies of this filing were furnished to all affected customers and to each state commission within whose jurisdiction these customers distribute and sell electric energy at retail.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Pennsylvania Electric Company

[Docket No. ER93–199–000]

Take notice that Pennsylvania Electric Company on November 18, 1992, tendered for filing proposed changes in its Federal Energy Regulatory Commission Electric Service Tariff (No. FPC–70). The proposed changes would not increase or decrease revenues from jurisdictional sale and services. The nature of the change is confined to supplement Exhibit A (Delivery Points) of its existing Electric Service Tariff No. FPC–70 to reflect contributions in aid of construction received by the Company during the period 1974–1985 from Allegheny Electric Cooperative, Inc.

Copies of the filing were served upon Allegheny Electric Cooperative, Inc and the Pennsylvania Public Utility Commission.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Electric Power Company

[Docket No. ER93–226–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on November 20, 1992, tendered for filing (1) Supplement No. 6 to FERC Rate Schedule N. 65; (2) Supplemental 4 to FERC Rate Schedule No. 66 between itself and The Wisconsin Public Power Inc. System (WPPI), and (3) a Joint Use and Facility Sharing Agreement between Wisconsin Electric and Wisconsin Public Service Corporation (WPS). The Supplements identify a new delivery point (North Kaukauna) between Wisconsin Electic and WPPI under the Wisconsin Electric-WPPI Power Sales Agreement and the Wisconsin Electric Conjunctie Transmision Service Agreement. The Joint Use and Facility Sharing Agreement allows Wisconsin Electric companies' transmission routes coincide along the route from Wisconsin Electric's Apleton Substation and WPPI's North Kaukauna substation.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. Consolidated Edison Company of New York, Inc.

[Docket No. ER93–212–000]

Take notice that on November 17, 1992, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to Con Edison

Rate Schedule FERC No. 34, constituting an agreement for the relocation of certain transmission facilities at Hillburn, New York, for the benefit of Orange and Rockland Utilities, Inc. (Orange & Rockland). Con Edison requests a waiver of notice requirements so that the Supplement can be made effective as of May 1, 1991.

Con Edison states that a copy of this filing has been served by mail upon Orange & Rockland.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Consolidated Edison Company of New York, Inc.

[Docket No. ER93–213–000]

Take notice that on November 18, 1992, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Rate Schedule and Supplement constituting an agreement for the construction, operation and maintenance of the interconnection between Astoria No. 6 Generating Unit and the East 13th Street Substation. Con Edison requests waiver of the notice requirements so that the Rate Schedule and Supplement can be made effective as of December 13, 1974 and January 1, 1981, respectively.

Con Edison states that a copy of this filing has been served by mail upon the Power Authority of the State of New York.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Metropolitan Edison Company

[Docket No. ER93–217–000]

Take notice that Metropolitan Edison Company (Met-Ed) on November 18, 1992, tendered for filing various agreements relating to the provision by Met-Ed of borderline service to Philadelphia Electric Company and Pike County Light and Power Company and charges by Met-Ed for such services. The proposed filing would not increase or decrease revenues from jurisdictional sales and services.

Copies of the filing were served upon Philadelphia Electric Company and Pike County Light and Power Company and the Pennsylvania Public Utility Commission.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. Tampa Electric Company

[Docket No. ER93–218–000]

Take notice that on November 18, 1992, Tampa Electric Company (Tampa Electric) tendered for filing certain construction, interconnection, and other agreements with the City of Lakeland, Florida (Lakeland), Florida Power & Light Company (FP&L), Florida Power Corporation (FPC), and Mulberry Phosphates, Inc. (MPI) that contain provisions concerning contributions in aid of construction.

Tampa Electric has requested waiver of the Commission's notice requirements to allow the agreements to be made effective retroactively, or prospectively on less than 60 days' notice.

Copies of the filing have been served on Lakeland, FP&L, FPC, MPI, and the Florida Public Service Commission.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Boston Edison Company

[Docket No. ER93–223–000]

Take notice that on November 19, 1992, pursuant to Part 35 of the Commission's Rules and Regulations, 18 CFR part 35. Boston Edison Company (BECo) filed an agreement under which BECo has constructed to achieve a new interconnection between itself and the Concord Municipal Light Department, Concord, Massachusetts (CMLP).

BECo requests that the agreement be permitted to become effective January 19, 1993, which a sixty (60) days following it filing with the Commission.

Comment date: December 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–29264 Filed 12–2–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER93–182–000, et al.]

Puget Sound Power & Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 24, 1992.

Take notice that the following filings have been made with the Commission:

1. Puget Sound Power & Light Company

[Docket No. ER93–182–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, "Power Sales Agreement between Aubrey F. and Eva E. Taylor and Puget Sound Power & Light Company (100 KW or Less)" (the "Agreement"), containing provisions for construction of facilities, power purchase by Puget or parallel operation of facilities. A copy of the filing was served upon Eva E. Taylor.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Puget Sound Power & Light Company

[Docket No. ER93–179–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule "Power Sales Agreement between J.V. Leishman and Puget Sound Power & Light Company (100 KW or Less): (the "Agreement"), containing provisions for construction of facilities, power purchase by Puget or parallel operation of facilities. A copy of the filing was served upon Mr. Leishman.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Power & Light Company

[Docket No. ER93–178–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, "Power Sales Agreement between Robert W. Vinnedge and Puget Sound Power & Light Company (100 KW or Less)" (the "Agreement"), containing provisions for construction of facilities, power purchase by Puget or Parallel operation of facilities. A copy of the filing was served upon Mr. Vinnedge.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Power & Light Company

[Docket No. ER93–180–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as

an initial rate schedule, "Power Sales Agreement between Louis Kahn and Puget Sound Power & Light Company (100 KW or Less)" (the "Agreement"), containing provisions for construction of facilities, power purchase by Puget or parallel operation of facilities. A copy of the filing was served upon Mr. Kahn.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Puget Sound Power & Light Company

[Docket No. ER93–156–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, "Agreement for Firm Power Purchase" between Puget and Sumas Energy, Inc. (the Agreement), containing provisions for construction of facilities, power purchase by Puget or parallel operation of facilities. A copy of the filing was served upon Sumas Energy, Inc.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Power & Light Company

[Docket No. ER93–164–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, "Power Sales Agreement" between Puget and Sumas Mountain Power Company (the Agreement), containing provisions for construction of facilities, power purchase by Puget or parallel operation of facilities. A copy of the filing was served upon Sumas Mountain Power Company.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Power & Light Company

[Docket No. ER93–185–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, "Agreement for Firm Power Purchase" between Puget and Skagit County, a political subdivision of the State of Washington (the Agreement), containing provisions for construction of facilities, power purchase by Puget or parallel operation of facilities. A copy of the filing was served upon Skagit County.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Power & Light Company

[Docket No. ER93–186–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, "Agreement for the Purchase of Power" between Puget and South Fork II, Inc. (the Agreement), containing provisions for construction of facilities, power purchase by Puget or parallel operation of facilities. A copy of the filing was served upon South Fork II, Inc.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Central Power and Light Company

[Docket No. ER93–152–000]

Take notice that on November 16, 1992, Central Power and Light Company (CPL) tendered for filing certain documents relating to the installation and construction of facilities at the Las Milpas, Union Carbide and Pharr/N. Edinburg points of delivery at which CPL provides full-requirements wholesale electric service to Magic Valley Electric Cooperative (MVEC) under CPL's FERC Electric Tariff.

CPL requests that the Commission either determine that such documents are not required to be filed under the Federal Power Act or, in the alternative, that the Commission's notice requirements be waived in order to permit such documents to become effective retroactively as supplements to CPL's service Agreement with MVEC.

Copies of this filing have been served on MVEC and the Public Utility Commission of Texas. CPL's other wholesale customers, Rio Grande Electric Cooperative, Inc., South Texas Electric Cooperative, Inc., Medina Electric Cooperative, Inc., and Kimble Electric Cooperative, Inc., the Public Utilities Board of the City of Brownsville, Texas and the City of Robstown, Texas have been notified of CPL's request for waiver of the Commission's notice requirements.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Puget Sound Power & Light Company

[Docket No. ER93–183–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing information relating to service under Rate Schedule FERC No. 78 or construction, relocation, operation, maintenance or ownership of facilities by Puget or the City of Seattle (Seattle). A copy of the filing was served upon Seattle.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Puget Sound Power & Light Company

[Docket No. ER93–163–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing as an initial rate schedule, "Power Sales Agreement between Flow Industries and Puget Sound Power & Light Company (100 kW or Less)" (the Agreement), containing provisions for construction of facilities power purchase by Puget or parallel operation of facilities. A copy of the filing was served upon Flow Industries.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp

[Docket No. ER93–188–000]

Take notice that on November 17, 1992, PacifiCorp, tendered for filing in accordance with Commission's Order pertaining to agreements involving contribution in aid of construction, issued October 13, 1992 under Docket No. ER92–183–002, several agreements which contain provisions involving contribution in aid of construction.

Copies of this filing were supplied to the Bonneville Power Administration, Central Electric Cooperative, Inc. and the Public Utility Commission of Oregon.

PacifiCorp requests, for each filed agreement either (1) a waiver of the prior notice requirement, to permit such agreement(s) to become effective as of the date specified therein, or (2) a letter confirming that the Commission's approval is not required for such agreement(s).

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Puget Sound Power & Light Company

[Docket No. ER93–187–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, "Power Sales Agreement between Robert B. Shipp and Puget Sound Power & Light Company" (the Agreement), containing provisions for construction of facilities, power purchase by Puget or parallel operation of facilities. A copy of the filing was served upon Mr. Shipp.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Puget Sound Power & Light Company

[Docket No. ER93–181–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, "Parallel Operation Agreement between Lake Marie Wind Farm and Puget Sound Power & Light Company (100 KW or Less)" (the "Agreement"), containing provisions for construction of facilities, power purchase by Puget or parallel operation of facilities. A copy of the filing was served upon Lake Marie Wind Farm.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. PacifiCorp

[Docket No. ER93–189–000]

Take notice that PacifiCorp, on November 17, 1992, tendered for filing, in accordance with the Commission's Order pertaining to agreements involving contribution in aid of construction ("CIAC"), issued on October 13, 1992 under Docket No. ER92–183–002, several agreements which contain provisions CIAC.

Copies of this filing were supplied to the Public Utility Commission of Oregon; Utah Public Service Commission; Western Area Power Administration; City of Bountiful, Utah; Weber-Box Elder Conservation District; Southern Utah Valley Power Project; Strawberry Water Users Association; Tri-State Generation and Transmission Association, Inc.; Sheridan-Johnson Rural Electrification Association; and City of Provo, Utah.

PacifiCorp requests, for each filed agreement either (1) a waiver of the prior notice requirement, to permit such agreement(s) to become effective as of the date specified therein, or (2) a letter confirming that the Commission's approval is not required for such agreement(s).

Comment date: December 9, 1992, in accordance with standard Paragraph E at the end of this notice.

16. Puget Sound Power & Light Company

[Docket No. ER93–177–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, "Power Sales Agreement between R.R. Hansen and Puget Sound Power & Light Company 100 KW or Less)" and "Parallel Operation Agreement between R.R. Hansen and Puget Sound Power & Light Company (100 KW or Less)" (the Agreements"), containing provisions for construction of facilities, power purchase by Puget or parallel operation of facilities. A copy of the filing was served upon Mr. Hansen.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Puget Sound Power & Light Company

[Docket No. ER93–176–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, "Parallel Operation Agreement between the City of Bremerton and Puget Sound Power & Light Company" (the "Agreement"), containing provisions for construction of facilities, power purchase by Puget or parallel operation of facilities. A copy of the filing was served upon the City of Bremerton.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. Puget Sound Power & Light Company

[Docket No. ER93–165–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, "Agreement for the Purchase of Power" between Puget and Thermal Reduction Company (the "Agreement"), containing provisions for construction of facilities, power purchase by Puget or parallel operation of facilities. A copy of the filing was served upon Thermal Reduction Company.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Oklahoma Gas and Electric Company

[Docket No. ER93–194–000]

Take notice that on November 18, 1992, Oklahoma Gas and Electric Company (OG&E) filed a letter approving its application for membership to the Western Systems Power Pool (WSPP). The WSPP Agreement is on file with the Commission. OG&E has proposed that its membership to the WSPP become effective on 5 November 1992, the date of the letter that the Executive Committee issued approving OG&E's application for membership.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Central Vermont Public Service Corporation

[Docket No. ER93–192–000]

Take notice that on November 18, 1992, Central Vermont Public Service Corporation (Company) tendered for filing copies of notices of extension of termination date of FERC Electric Tariff, Original Volume No. 4 (Tariff) to October 31, 2008. The Company provides service under the Tariff and gave notices of extension of termination date to the following:

Lyndonville Electric Department
Village of Ludlow Electric Light Department
Village of Johnson Water and Light Department
Village of Hyde Park Water and Light Department

Such notice of extension of termination date is provided for in the Tariff on Original Sheet No. 4.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. Alabama Power Company

[Docket No. ER93–191–000]

Take notice that on November 18, 1992, Alabama Power Company (APCo) submitted documentation reflecting reimbursements by Alabama Municipal Electric Authority and by Alabama Electric Cooperative, Inc. for improvements and modifications to APCo's transmission facilities, as requested by those customers pursuant to the terms and conditions of the Agreement for Partial Requirements Service and Complementary Services between APCo and AMEA and the Agreement for Transmission Service to Distribution Cooperative Members of Alabama Electric Cooperative, respectively. These submittals were made pursuant to the 30-day amnesty period announced by the Commission in *Florida Power Corp.*, Docket No. ER92–183–002, as published in the **Federal Register** on October 19, 1992. In addition, APCo submitted a Transmission Service Delivery Point Agreement dated June 1, 1989, pertaining to the Clayton delivery point of Pea River Electric Cooperative. APCo indicates that it is unable to confirm whether this agreement was submitted for filing and, if it was not, requests an effective date of June 1, 1989.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Puget Sound Power & Light Company

[Docket No ER93–190–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, Agreement for the Purchase of Power from Crown Zellerback Corporation" between Crown Zellerback Corporation and Puget, dated as of July 30, 1982, "Agreement for Firm Power Purchase" between Port Townsend Paper Corporation and Puget, dated as of November 9, 1987, and "Agreement for Firm Power Purchase" between Port Townsend Paper Corporation and Puget, dated as of September 25, 1989 (collectively, the Agreements), containing provisions for construction of facilities, power purchase by Puget or parallel operation of facilities. A copy of the filing was served upon Port Townsend Paper Corporation.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. Puget Sound Power & Light Company

[Docket No ER93–166–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, "Agreement for the Purchase of Energy from Boeing's Auburn Cogenerator" between Puget and The Boeing Company (the Agreement), containing provisions for construction of facilities, power purchase by Puget or parallel operation of facilities. A copy of the filing was served upon The Boeing Company.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. Metropolitan Edison Company

[Docket No ER93–193–000]

Take notice that on November 18, 1992, Metropolitan Edison Company (Met-Ed) tendered for filing a proposed supplement to its Interconnection Agreement, made as of October 30, 1984 with Pennsylvania Power & Light Company (PP&L). The proposed changes would not increase or decrease revenues from jurisdictional sales and services. The changes are limited to the filing of agreements relating to the reciprocal provision of borderline services and related charges between the two companies.

Copies of the filing were served upon PP&L and the Pennsylvania Public Utility Commission.

Comment date: December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

25. Puget Sound Power & Light Company

[Docket No. ER93–167–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing information relating to construction, operation, maintenance or ownership of facilities by Puget, The Montana Power Company, The Washington Water Power Company, Portland General Electric Company and Pacificorp. A copy of the filing was served upon The Montana Power Company, The Washington Water Power Company, Portland General Electric Company and Pacificorp.

Comment date. December 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

26. Puget Sound Power & Light Company

[Docket No. ER93–184–000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, "Agreement for Purchase of Power" between Puget and Pacific Hydropower Associates (the Agreement), containing provisions for construction of facilities, power purchase by Puget or parallel operation of facilities. A copy of the filing was served upon Pacific Hydropower Associates.

Comment date. December 9, 1992, in accordance with Standard paragraph E at the end of this notice.

Standard Paragraphs

E Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–29262 Filed 12–2–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–1050–001, et al.]

Panhandle Eastern Pipe Line Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission

1. Panhandle Eastern Pipe Line Company

[Docket No. CP90–1050–001]

November 20, 1992.

Take notice that on November 18, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP90–1050–001 a petition to amend the application filed in Docket No CP90–1050–000 to operate certain previously uncertificated facilities pursuant to section 7(c) of the Natural Gas Act and to refunctionalize those facilities and specified certificated facilities from gathering to transmission, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Panhandle states that it is filing to reflect the refunctionalization issues subsequently set for decision in Docket No CP90–1050–000 and to update the list of facilities proposed to be certificated nunc pro tunc and/or refunctionalized. Panhandle lists a total of 283 facilities to be refunctionalized, including 13 that have not been certificated. Panhandle indicates that all of the facilities qualify as transmission facilities as defined by the Commission's Uniform System of Accounts and the Commission's Primary Function Test, as articulated in Amerada Hess Corporation, et al., 52 FERC ¶ 61,268.

Comment date. December 11, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company

[Docket No CP93–65–000]

November 20, 1992

Take notice that on November 12, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP93–65–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon sales service to Westar Transmission Company, a subsidiary of

American Pipeline Co. (Westar), and to remove Rate Schedule X–88 from its FERC Gas Tariff, Original Volume No. 2, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that it entered into a gas sales agreement (sales agreement) with Westar on February 12, 1987. Northern states that the Commission granted a certificate to Northern authorizing the sale of gas by Northern to Westar on July 8, 1988, in Docket No CP87–490. Northern states that it filed the gas agreement as Rate Schedule X–88 in Volume No. 2 of its FERC Gas Tariff.

According to Northern the gas sales agreement with Westar expired of its own terms on February 29, 1992. Northern states that Westar advised Northern by letter dated August 25, 1992, that Westar desired to abandon Rate Schedule X–88. Northern further states that no facilities are proposed to be abandoned.

Comment date December 11, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. El Paso Gas Marketing Company

[Docket No. CI93–8–000]

November 24, 1992.

Take notice that on November 18, 1992, El Paso Gas Marketing Company (EPGM) filed an application under sections 4 and 7 of the Natural Gas Act for an unlimited term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale. EPGM states that it will secure gas supplies for resale from: Producers; brokers on the spot market, any interstate pipeline under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales of surplus system supply gas by the pipeline or an Order No. 636 blanket sales certificate; other sellers not making "first sales" under the Natural Gas Policy Act, such as intrastate pipelines, local distribution companies, and excess gas marketed by qualifying industrial and cogeneration facilities; imported natural gas and liquified natural gas. The application is on file with the Commission and open to public inspection.

Comment date December 15, 1992, in accordance with Standard Paragraph J at the end of this notice.

4. Michigan Gas Storage Company

[Docket No CP93–70–000]

November 24, 1992.

Take notice that on November 18, 1992, Michigan Gas Storage Company (Storage Company), 212 West Virginia Avenue, Jackson, Mississippi 49201, filed in Docket No. CP93–70–000, a request pursuant to sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a delivery tap to serve the Consumers Power Company (Consumers) Fenton Distribution System under the blanket certificate issued in Docket No. CP84–451–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Storage Company states that it proposes to install a 4-inch delivery tap on its Line #400 to reinforce Consumers' 6-inch medium pressure (60 psig MAOP) system which has experienced decreased operating pressure due to an increase in customers and an increase in use per customer Storage Company also states that Consumers has requested that Storage Company delivery up to 3,000 Mcf/d at this delivery tap starting the winter of 1992/93 under existing contracts with Storage Company. The estimated cost of the tap is $10,000.

Comment date January 11, 1993, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157 10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary

[FR Doc. 92–29263 Filed 12–2–92, 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–29–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 27, 1992.

Take notice that ANR Pipeline Company ("ANR"), on November 20,

1992 tendered for filing as part of its First Revised Volume Nos. 1 and 1–A and Original Volume Nos. 2 and 3 of its FERC Gas Tariff, six copies of the tariff sheets as listed on Appendix A, to the filing.

ANR states that the referenced tariff sheets are being submitted pursuant to § 2.104 of the Commission's Regulations to implement partial recovery of approximately $6.3 million of additional buyout buydown costs, part by a fixed monthly charge applicable to ANR's sales customers and part by a volumetric buyout buydown surcharge of $0.0009 per dth applicable to all throughput. In particular, this filing is being made pursuant to Article II of the Stipulation and Agreement filed by ANR on February 12, 1991 in Docket Nos. RP91–33–000 and RP91–35–0000, as approved by the Commission on March 1, 1991. ANR has requested that the Commission accept the tendered tariff sheets to become effective December 21, 1992. ANR states that it intends to commence billing of the proposed fixed monthly charges and volumetric surcharge in February, 1993 for January, 1993 business.

ANR states that all of its Volume Nos. 1, 1–A, 2 and 3 customers and interested State Commissions have been apprised of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 N. Capitol Street NE., Washington, DC 20426 by December 4, 1992 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc 92–29268 Filed 12–2–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT93–9–000]

High Island Offshore System; Tariff Revision

November 27, 1992

Take notice that on November 19, 1992, High Island Offshore System ("HIOS") tendered for filing the following revised tariff sheet from HIOS' Rate Schedule I, as set forth in its FERC Gas Tariff, First Revised Volume No. 1:

Third Revised Sheet No. 14 (superseding Second Revised Sheet No. 14)

HIOS states that the tariff sheet reflects a reduction in El Paso Natural Gas Company ("El Paso") volume as specified in Rate Schedule I that governs the allocation to El Paso of Interruptible Overrun capacity. HIOS states further that the reduction is required by, and proportionate to, a relinquishment of firm capacity by El Paso pursuant to § 284.304(a) of the Commission's regulations.

HIOS requests that the revised tariff sheet be accepted for filing and made effective on January 1, 1993.

Any person desiring to be heard or to protect said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 4, 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 to the proceeding 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. 92–29266 Filed 12–2–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–2–26–000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

November 27, 1992.

Take notice that on November 20, 1992, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, revised tariff sheets to be effective January 1, 1993.

Natural states that the purpose of the filing is to implement the Gas Research Institute (GRI) Adjustment in accordance with section 26 of the General Terms and Conditions of Natural's FERC Gas Tariff, Fourth Revised Volume No. 1. The GRI rates authorized by the Commission to be effective January 1, 1993 are $.08 per MMBtu for demand or reservation rates and 1.47¢ per MMBtu for commodity rates. The GRI Adjustment, where appropriate, is reflected in Natural's sales, transportation and storage rates. Natural states that it also filed to make incidental conforming changes in section 26, including substituting a thirty-day notice period for a forty-day notice period.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective January 1, 1993.

Natural states a copy of the filing is being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 4, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–29270 Filed 12–2–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–177–001]

Northern Border Pipeline Co.; Place Tariff Sheets into Effect

November 27, 1992.

Take notice that on November 20, 1992, Northern Border Pipeline Company (Northern Border) moves to effectuate the following tariff sheets, Third Revised Sheet No. 104 and Fifth Revised Sheet No. 111, which were filed by Northern Border in Docket No. RP92–177–000.

Northern Border states that on June 30, 1992, the Commission issued an order in Docket No. RP92–177–000 accepting and suspending the filed tariff sheets for the maximum allowable period of five months to take effect on December 1, 1992.[1] Northern Border states that the effective date of the tariff sheets is December 1, 1992.

Northern Border respectfully moves that the suspended tariff sheets be placed into effect.

Northern Border states that copies of the filing were served upon each person

[1] 59 FERC ¶ 61,411 (1992).

designated on the official service list compiled by the Secretary.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 All such protests should be filed on or before December 4, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 92–29265 Filed 12–2–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–2–86–000]

Pacific Gas Transmission Company; Change in Rates

November 27, 1992.

Take notice that on November 24, 1992, Pacific Gas Transmission Company (PGT), a California corporation, whose mailing address is 160 Spear Street, San Francisco, California 94105–1570, tendered for filing a revision in the Gas Research Institute (GRI) funding unit adjustment component of PGT's rates for certain sales and transportation services in accord with Paragraph 3, GRI Charge Adjustment Provisions of the General Terms and Conditions in PGT's FERC Gas Tariff Second Revised Volume No. 1 and Paragraph 2 of the Transportation General Terms and Conditions in PGT's FERC Gas Tariff Original Volume No. 1–A. This change in rates is filed pursuant to section 4 of the Natural Gas Act and Part 154 of the regulations issued thereunder.

PGT states it is tendering certain tariff sheets in compliance with its GRI Tariff provisions.

By an order issued August 28, 1992 at Docket No. RP92–133–000 (Phase I), the Commission approved GRI's proposed funding mechanism for calendar year 1993 submitted on May 26, 1992. This proposed mechanism continues the GRI volumetric surcharge of 1.47 cents per MMBtu but also includes a new uniform demand/reservation surcharge of 8 cents per MMBtu per month on all firm sales or transportation entitlements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 4, 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 in the public reference room.

Lois D. Cashell,

Secretary

[FR Doc. 92–29269 Filed 12–2–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–30–000]

Pan-Alberta Gas (U.S.) Inc.; Tariff Changes

November 27, 1992.

Take notice that on November 20, 1992, Pan-Alberta Gas (U.S.) Inc. ("PAG–US"), 500, 707 Eighth Avenue, SW., Calgary, Alberta, Canada T2P 3V3, tendered for filing in Docket No. RP93–30–000 Sixth Revised Sheet No. 4 Superseding Fifth Revised Sheet No. 4 to its FERC Gas Tariff Original Volume No. 2.

PAG–US states that it is submitting Sixth Revised Sheet No. 4 (1) to reflect a decrease in demand charges during the forthcoming demand charge period (January 1, 1993 through June 30, 1993) for Canadian gas purchased by PAG–US from Northwest Alaskan Pipeline Company ("Northwest Alaskan") and resold to Northern Natural Gas Company ("Northern") under Rate Schedule X–1; and (2) to reflect a downward adjustment in its demand charges to Northern for prior periods.

PAG–US requests that Sixth Revised Sheet No. 4 become effective on January 1, 1993.

PAG–US states that a copy of this filing has been served on Northern.

Any person desiring to be heard or to protest said filing should file a petition 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. All such petitions or protests should be filed on or before December 4, 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 92–29267 Filed 12–2–92, 8:45 am]

BILLING CODE 6717–01–M

Office of Environmental Restoration and Waste Management

Availability of Department of Energy Strategy for Development of a National Compliance Plan for DOE Mixed Waste

AGENCY: Office of Environmental Restoration and Waste Management (EM), Department of Energy (DOE).

ACTION: Published draft strategy and request for public comment.

SUMMARY: Today, the Department of Energy (DOE) publishes a draft Strategy for Development of a National Compliance Plan for DOE Mixed Waste (Strategy). The purpose of the Strategy is to set forth DOE's plan to develop a National Compliance Plan for DOE Mixed Waste (National Compliance Plan) in cooperation with the Environmental Protection Agency (EPA), States, and interested members of the public. The National Compliance Plan will integrate DOE's current management activities for mixed waste (waste that has both hazardous and radioactive components) into a comprehensive long-range plan to ensure the development of adequate waste-treatment capacity and to promote compliance with applicable laws and regulations

DOE is soliciting comments on the content of the Strategy from interested persons, organizations, and agencies.

DATES: Written comments to DOE should be received by January 4, 1993.

ADDRESSES: Copies of the Strategy may also be obtained by telephoning (202) 586–5575, or by direct pickup from or requested in writing to: Office of Public Affairs, U.S. Department of Energy, room 1E–206, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Comments should be sent to: Ms. Jean Schumann, U.S. Department of Energy EM–5, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ms. Jean Schumann at the address above or telephone at (202) 586–7769 or fax (202) 586–7757.

SUPPLEMENTARY INFORMATION:

I. Background

DOE plans to develop, with input from the EPA, States, and interested members of the public, a National Compliance Plan for DOE Mixed Waste Radioactive mixed waste (or "mixed waste") is waste that contains both hazardous waste regulated under the Resource Conservation and Recovery Act, (42 U.S.C. 6901 et seq.) and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954, as amended (42 U.S. 2011 et seq.). The primary purpose of the National Compliance Plan will be to integrate the Department's mixed waste management activities into a coordinated national plan to ensure development of adequate mixed waste treatment capacity and to establish proposed schedules for:

- Utilizing and upgrading existing mixed waste treatment capacity;
- Developing new mixed waste treatment technologies;
- Submitting necessary permit applications for treatment facilities; and
- Constructing and utilizing new waste treatment facilities.

The proposed schedules and activities developed in the national planning process will be incorporated into site-specific mixed waste plans for individual DOE facilities. The recently enacted Federal Facility Compliance Act of 1992, Pub. L. 102–386, requires DOE to submit site-specific mixed waste treatment plans to EPA or the appropriate State regulatory agency. DOE believes that a two step process—development of a National Compliance Plan followed by development of site-specific plans—is the most prudent, and with the support of EPA and the States, viable approach to meeting the requirements of the Federal Facility Compliance Act. This approach is consistent with the Act's specific recognition that DOE may propose centralized and regionalized treatment facilities in the site-specific plans to provide needed treatment capacity and the requirement that EPA and the States consider the need for regional treatment facilities.

The purpose of the Strategy is to set forth DOE's plan to develop a National Compliance Plan. Topics that will be addressed in the Strategy include:

- The regulatory framework that governs mixed waste management;
- Current DOE mixed waste generation and inventory date, treatment needs, and technology development efforts;
- The need for a National Compliance Plan;
- The proposed contents of the National Compliance Plan;
- The proposed process for developing the National Compliance Plan, and
- Coordination of the National Compliance Plan with other Department efforts

Issued in Washington, DC, November 30, 1992

Leo P. Duffy

Assistant Secretary for Environmental Restoration and Waste Management

Department of Energy Strategy for Development of a National Compliance Plan for DOE Mixed Waste

The Department of Energy (DOE or Department) plans to develop, with input from the Environmental Protection Agency (EPA), States, and public, a National Compliance Plan for DOE Mixed Waste (National Compliance Plan). Radioactive mixed waste (or "mixed waste") is waste that contains both hazardous waste subject to the Resource Conservation and Recovery Act (RCRA) and source special nuclear, or by-product material subject to the Atomic Energy Act (AEA). The primary purpose of the National Compliance Plan will be to integrate the Department's mixed waste management activities into a coordinated national plan to ensure development of adequate mixed waste treatment capacity and to establish proposed schedules for DOE to follow in:

- Utilizing and upgrading existing mixed waste treatment capacity;
- Developing new mixed waste treatment technologies;
- Submitting necessary permit applications for treatment facilities; and
- Constructing and utilizing new waste treatment facilities

The proposed schedules and activities developed in the national planning process will be incorporated into site-specific mixed waste plans for individual DOE facilities. The recently enacted Federal Facility Compliance Act of 1992 requires DOE to submit site-specific mixed waste treatment plans to EPA or the appropriate State regulatory agency. DOE believes that a two step process—development of a National Compliance Plan followed by development of site-specific plans—is the most prudent and, with the support of EPA and the States, viable approach to meeting the requirements of the Federal Facility Compliance Act. Further, this approach is consistent with the Act's specific recognition that DOE may propose centralized and regionalized treatment facilities in the site-specific plans to provide needed treatment capacity and the requirement that EPA and the States consider the need for regional treatment facilities.

Although the focus of the National Compliance Plan will be on the development of treatment technology and treatment capacity for mixed waste, the Department also proposes to address the comprehensive management of DOE's mixed waste, from point of generation to point of disposal. A plan to ensure proper treatment of mixed waste must also consider management to the waste prior to treatment (e.g., characterization) and after treatment (e.g., disposal) because these other activities can impact the selection of treatment technologies and schedule for treating the waste. It is particularly important to consider the intended disposal site when identifying and developing treatment technologies for a waste, because the treatment technology must produce a waste form that meets the disposal facility's waste acceptance criteria. Therefore, the National Compliance Plan will also discuss mixed waste minimization, characterization, storage, and transportation; use of commercial capacity; and integration of environmental restoration and decontamination and decommissioning (D&D) activities with the development of appropriate mixed waste treatment, storage, and disposal capacity. Particular emphasis will be placed on how these other waste management activities relate to waste treatment.

The Department intends for the National Compliance Plan to be integrated with, and to build upon, various planning and public participation efforts underway in the environmental restoration, waste management, and technology development programs conducted by the Office of Environmental Restoration and Waste Management (EM). In particular, preparation of the National Compliance Plan will be carefully coordinated with current EM efforts to prepare a programmatic environmental impact statement (PEIS) for the DOE environmental restoration and waste management program pursuant to the requirements of the National Environmental Policy Act (NEPA). The EM PEIS will assess the potential environmental impacts associated with alternatives for environmental restoration and waste management program activities to ensure that decisions are made with full consideration of the environmental impacts of the proposed action and alternatives.

The waste management section of the EM PEIS will include evaluation of a range of strategic alternatives for the

configuration of treatment, storage, and disposal (TSD) facilities for mixed waste, generally from maximum consolidation of TSD facilities to minimum consolidation to local siting. While the EM PEIS will evaluate a range of TSD facility configuration alternatives, the National Compliance Plan will evaluate options for TSD facility technologies and standardized facility designs. TSD technologies for facilities at specific sites would be proposed in the site-specific plans required by the Federal Facility Compliance Act and subject to appropriate NEPA review prior to implementation. The National Compliance Plan will also constitute a framework for long-term management of the Department's mixed waste activities, including implementation of decisions made in the EM PEIS Record of Decision (ROD).

The National Compliance Plan is also intended to build upon existing DOE commitments (e.g., compliance agreements) to construct mixed waste treatment capacity and undertake other mixed waste management activities. The development of the National Compliance Plan will begin with an assessment of commitments for existing and planned mixed waste management facilities and activities and, as the plan progresses, will evaluate whether modifications or additional actions are needed. The EPA and State regulatory agencies will be invited to participate in this evaluation process. If needed, DOE will propose revisions through the mechanism appropriate for that commitment (e.g., for compliance agreements, generally the modification clause). During development of the National Compliance Plan, however, DOE will continue to use the mixed waste treatment capacity that already exists and will continue to meet its existing commitments.

The need for the Department to develop a national plan to direct its mixed waste management program as a cooperative effort with EPA, States, and the public has become evident as DOE has analyzed the mixed waste management, cleanup, and D&D activities that will be required at its facilities under applicable environmental laws. The factors that drive the need for the development of a National Compliance Plan, in conjunction with the EM PEIS, include the following:

- The RCRA land disposal restrictions (LDRs) and Federal Facility Compliance Act require DOE to develop treatment capacity for its mixed waste. The Department considers development of a National Compliance Plan an essential step to ensuring development of this capacity. The LDRs generally require treatment of mixed waste prior to disposal, but current treatment capacity in the DOE system and commercial sector is inadequate to meet DOE's needs. It is necessary, therefore, for the Department to store its mixed waste until sufficient treatment capacity is developed, although such storage is generally prohibited under the LDRs. Thus, because the lack of treatment capacity is a complex-wide compliance issue for the Department, with mixed waste currently being managed at 37 sites, it is appropriate for DOE to address this issue with a national plan to ensure that adequate capacity is developed to meet LDR requirements across the DOE complex. Additionally, as discussed earlier, the Federal Facility Compliance Act require DOE to submit site-specific plans to EPA or the appropriate State containing schedules for providing treatment capacity for mixed waste streams at DOE sites. The Department proposes to develop the site-specific plans based on the analyses in the EM PEIS and National Compliance Plan.
- At some DOE sites, regulators have restricted receipt of off-site or out-of-state wastes in waste management permits for treatment facilities and other types of waste management units. In setting these restrictions, States have expressed concerns about the equitable distribution of DOE mixed waste TSD facilities across the nation. If these restrictions were to be applied at each of the 37 DOE sites currently managing mixed waste, however, they may result in a costly duplication of TSD facilities with little environmental or health benefit. In fact, constructing and operating TSD facilities for every mixed waste stream at every DOE site may use time, effort, and money that could otherwise be used on other environmental projects. The EM PEIS and National Compliance Plan will provide the framework for evaluating the advantages and disadvantages associated with various options for the siting and use of mixed wastes TSD facilities.
- States have various low-level radioactive waste management problems, the resolution of which may potentially be coupled with various Departmental activities to conserve and focus governmental waste management resources. The National Compliance Plan process can help to explore such potential opportunities.
- The Department is concerned that current site-specific efforts to address mixed waste management needs will fail to achieve an efficient, cost-effective configuration of TSD facilities and approach to technology development. Site-specific technology development and implementation may foster unnecessary duplication of effort among sites in defining technology needs and designing facilities. DOE waste management is only one of many programs competing for limited taxpayer dollars. Development of a nationally coordinated waste management program can promote sound fiscal management of taxpayer dollars by optimizing technology development efforts and the use of facilities.
- Implementing site-specific activities without a national plan may not adequately consider the cumulative environmental impacts of the Department's mixed waste management decisions. DOE proposes to coordinate the National Compliance Plan with the FM PEIS to ensure adequate consideration of these impacts.

The Department proposes to develop the National Compliance Plan over a 3-year period. The beginning of the process will focus on development of a national mixed waste management program in coordination wit preparation of the EM PEIS. The results of these national planning efforts will be incorporated into site-specific mixed waste treatment plans. The activities proposed in these plans would be subject to appropriate NEPA review prior to implementation. The proposed process is consistent with the requirements of the Federal Facility Compliance Act. The proposed activities during the 3-year period include the following:

- October 1992–1993:
  - —Develop draft National Compliance Plan and EM PEIS and issue for public comment
  - —Develop consistent format and content site-specific plans
- October 1993–1994:
  - —Issue final EM PEIS
  - —Begin preparation of final National Compliance Plan
  - —Begin preparation of site-specific plans in conjunction with preparation of final National Compliance Plan
- October 1994–1995:
  - —Publish EM PEIS ROD
  - —Submit final National Compliance Plan to EPA/States for comment
  - —Complete site-specific plans and submit to EPA/States for approval

The Department proposes substantial involvement by EPA, the States, and the public throughout the development of the National Compliance Plan, as well as the involvement of other federal

agencies, such as the Nuclear Regulatory Commission (NRC) and Department of Transportation (DOT), where appropriate. In particular, DOE proposes to:

- Begin this process by providing this draft strategy for a National Compliance Plan to EPA and the Governors for review, with comments requested by December 31, 1992, so that a final Strategy to guide the National Compliance Plan's preparation may be prepared;
- Organize and conduct periodic meetings of a Federal/State National Compliance Plan Workgroup, to be comprised of technical and policy representatives designated by participating States, EPA, NRC, DOT, and DOE to coordinate the collection of information necessary to support this effort and provide recommendations on the National Compliance Plan and site-specific plans as they are being formulated;
- Use exiting mechanisms for additional public and State, Tribal, and local government input throughout the preparation of the National Compliance Plan and site-specific plans, such as meetings of the State and Tribal Government Working Group, the Stakeholders Forum, the Western Governors' Association, the National Governors' Association, and the Environmental Restoration and Waste Management Advisory Committee (EMAC);
- Provide all interested parties an opportunity to review and comment on the draft National Compliance Plan concurrent with the public comment period for the draft EM PEIS (as required by the Federal Facility Compliance Act, EPA and the States would provide for public comment on the site-specific plans); and
- Provide local governments, Indian Tribes, and other interested parties in the vicinity of DOE sites with information and an opportunity to comment on the National Compliance Plan through use of existing public participation mechanisms at the sites.

A National Compliance Plan will be an important step toward promoting DOE compliance with the mixed waste requirements of the RCRA LDRs and Federal Facility Compliance Act, and ensuring sound management of a program that will entail significant federal expenditures. It will also provide a vehicle for early EPA, State, and public involvement in DOE's mixed waste management planning; for dialogue between these parties; and for increased understanding of the larger framework in which site-specific decisions are made.

Section 1—Introduction

Purpose and Contents of Strategy

The purpose of this Strategy is to set forth the Department of Energy's (DOE or Department) plan to develop a National Compliance Plan for DOE Mixed Waste (National Compliance Plan) in cooperation with the Environmental Protection Agency (EPA), States, and interested members of the public. The National Compliance Plan will integrate DOE's current management activities for mixed waste (waste that has both hazardous and radioactive components) into a comprehensive long-range plan that will achieve compliance with applicable laws and regulations.

This Strategy will discuss:

- The regulatory framework that governs mixed waste management;
- Current DOE mixed waste generation and inventory data, treatment needs, and technology development efforts;
- The need for a National Compliance Plan;
- State-regulated and PCB wastes;
- The proposed contents of the National Compliance Plan;
- The proposed process for developing the National Compliance Plan; and
- Coordination of the National Compliance Plan with other Department efforts.

The management of the Department's environmental restoration and waste management programs and the development of the National Compliance Plan are dynamic processes, changing in response to new environmental requirements, input from the public and regulatory agencies, the Department's changing mission, the generation of additional data from DOE's environmental programs, and other factors. Consequently, the National Compliance Plan may evolve significantly from the one envisioned in this Strategy.

Section 2—Background

Definition of Mixed Waste

Mixed waste is waste that is both hazardous waste subject to the Resource Conservation and Recovery Act (RCRA) and source, special nuclear, or byproduct material subject to the Atomic Energy Act (AEA). The radiological and hazardous components of mixed waste each present different hazards and require certain waste management practices. These two components are not readily separable. The Department's operations over the past decades have resulted in the generation of numerous radiological, hazardous, and mixed waste streams. In addition, the 30-year waste cleanup and facility decontamination and decommissioning (D&D) effort initiated by DOE in 1989 is likely to generate substantial quantities of additional waste, much of it mixed waste.

The Department is required under the Atomic Energy Act of 1954, as amended, to provide for the safe management of radioactive waste. Historically, radioactive waste managed by DOE has been divided into three categories, each subject to different management requirements:

- *High-level waste*—the highly radioactive waste material that results from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid waste derived from the liquid, that contains a combination of transuranic waste and fission products in concentrations requiring permanent isolation;
- *Transuranic (TRU) waste*—waste that is contaminated with alpha-emitting transuranium nuclides with half-lives greater than 20 years and concentrations greater than 100 nanocuries per gram of waste; and
- *Low-level waste*—radioactive waste not classified as high-level waste, transuranic waste, spent nuclear fuel, or certain byproduct material.

Due to the different management standards that apply to these three types of waste, mixed waste management programs within DOE are generally developed separately for high-level, transuranic, and low-level mixed waste types, although certain technologies may be developed for application to more than one waste type.

RCRA Regulation of Mixed Waste

RCRA was originally passed in 1976, as an amendment to the Solid Waste Disposal Act. It provides, among other things, for a "cradle-to-grave" hazardous waste management and tracking system. The 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA include the land disposal restrictions (LDRs), which generally prohibit the land disposal of hazardous—and mixed—wastes unless treated in accordance with EPA standards. Section 3004(j) of HSWA also prohibits the storage of these wastes except to allow the accumulation of sufficient quantities to facilities proper treatment, recovery, or disposal. HSWA also requires cleanup of contaminated sites at actively operating facilities—much like the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires cleanup of

inactive and abandoned sites. RCRA, in recognition of the AEA, exempts from RCRA regulation "source, special nuclear, or by-products material," as defined by the AEA.

In 1980, the Department took the position that its waste management activities related to weapons production were exempt from RCRA, based upon the AEA's jurisdiction over the Department's nuclear facilities and Section 1006(a) of RCRA, which provides that RCRA's requirements do not apply to "any activity or substance which is subject to . . . the Atomic Energy Act of 1954. . . ." Although subsequent litigation clarified that RCRA applied to DOE's hazardous waste, it did not determine RCRA's applicability to mixed waste. This was resolved to a certain extent on July 3, 1986, when EPA published a notice in the **Federal Register** (51 FR 24504) that it had determined that mixed waste was subject to RCRA and that States were required to petition the EPA for authorization to regulate mixed waste. Nevertheless, there was still some confusion as to the scope of wastes that constituted mixed waste. The July 3, 1986, notice stated that pending an interpretation of the "Byrproduct Definition" by DOE, mixed waste would be regulated by EPA on a case-by-case basis. On May 1, 1987, DOE published the "Byproduct Material" rule in the **Federal Register** (52 FR 15937), which clarified that all DOE radioactive waste that is hazardous under RCRA would be subject to dual regulation under both RCRA and the AEA.

Because of the uncertainty regarding RCRA's applicability to mixed waste in the mid-1980s, issues related to mixed waste were not the focus of the legislative process that led to the enactment of HSWA, or the early EPA rulemaking processes related to the LDRs. Consequently, requirements related to mixed waste management, treatment, and disposal have not been specifically addressed by the Congress in RCRA or HSWA or by EPA in many of the implementing regulations.

Prior to the "Byproduct Material" rule, mixed waste was generally managed in accordance with DOE Orders that focused on the radioactive nature of the material and were designed to implement AEA requirements. Treatment, storage, and disposal of mixed waste were not generally conducted in accordance with EPA regulations for hazardous waste under RCRA and its amendments. Consequently, when the "Byproduct Material" rule was published in 1987, there was little information available about the quantities and hazardous characteristics of the mixed waste managed throughout the Department and about the capability of existing Department facilities to manage mixed waste in compliance with the EPA hazardous waste regulations. In addition, the Department had not been focusing its efforts on developing mixed waste treatment technologies that would meet the requirements of the RCRA LDRs.

Since that time, the Department has made substantial progress in developing a RCRA-compliant waste management program. Indeed, RCRA is one of the most significant statutes affecting the Department's waste management and cleanup efforts. Over half of the budget of the Office of Environmental Restoration and Waste Management (EM) is spent on activities related to RCRA compliance (in fiscal year 1992, the total EM budget was approximately $4.3 billion).

One of the Department's major waste management efforts is developing a mixed waste program to achieve compliance with the LDRs. With some exceptions, the LDRs prohibit land disposal and storage of regulated hazardous waste unless the waste meets the EPA treatment standards for the particular waste type. Mixed waste is subject to these restrictions. Efforts to achieve compliance with the LDRs include characterizing mixed waste to identify applicable LDR requirements, evaluating appropriate treatment technologies for the waste, and constructing or obtaining needed treatment facilities. The Department is also pursuing LDR variances (e.g., treatability variances, no-migration variances) in some cases. At several DOE sites, schedules for implementing these LDR compliance activities have been incorporated into site-specific compliance agreements with the appropriate regulatory agencies.

Presently, however, there are a very limited number of RCRA permitted treatment facilities available to treat mixed waste, either within the DOE complex or in the commercial sector. Initial information has been gathered on the mixed waste streams the Department is generating and storing. Based on this data, RCRA treatment technologies have been identified for approximately 75 percent (by volume) of these wastes However, although technologies have been identified for many streams, operating capacity is still limited because technology development efforts are needed for some streams to adapt existing technologies to manage properly the radioactive component of the waste; for other streams, treatment facilities are still in the process of being permitted and constructed. Commercial capacity to manage DOE mixed waste is also very limited at present.

Constructing and commencing operations of a new DOE waste treatment facility can take 5 to 15 years to: (1) receive Congressional support to fund the facility, (2) acquire the necessary permits, which must be obtained before construction may begin, (3) comply with other applicable environmental statutes, such as the National Environmental Policy Act (NEPA), and (4) demonstrate the readiness of the unit to begin treating mixed waste. This time period could be shortened or extended based on the complexity of the facility operations and public support or opposition of the project.

As stated previously, because DOE currently lacks the facilities necessary to treat its mixed waste to LDR standards, it has been storing the waste pending development and construction of these facilities. However, in addition to requiring treatment of hazardous wastes prior to disposal, the LDRs also prohibit the storage of hazardous wastes, except where such storage is necessary to accumulate sufficient quantities to facilities proper treatment, recovery, or disposal. The prohibition does not allow storage for the purpose of developing treatment technologies or treatment capacity, which is the reason most DOE mixed waste streams are currently being stored. Thus, even though DOE generally operates the storage facilities in compliance with other RCRA storage requirements that ensure safe management of the waste, the LDR storage prohibition still applies to the waste itself.

RCRA does allow EPA to grant temporary relief from the LDR storage prohibition through a National Capacity Variance and/or Case-by-Case (CBC) Extension when EPA finds that treatment capacity is not sufficient for a particular restricted waste. However, such variances are short-term in nature and do not cover the length of time needed to develop sufficient capacity for mixed waste. Moreover, in some instances, a variance is no longer available. For example, the majority of DOE's mixed waste streams were covered under a 1986 LDR rulemaking on solvent and dioxin wastes and a 1987 LDR rulemaking on so-called "California list" wastes, but variances from the storage prohibition were not granted at that time due to the uncertainty regarding RCRA's applicability to mixed waste. Because RCRA limits the "life" of a capacity variance, variances are no longer available for solvent, dioxin and

California list mixed wastes. In 1990, however, EPA granted a National Capacity Variance for a third category of mixed waste, called "Third-Thirds" mixed waste, which comparies about 30 percent of the DOE mixed waste subject to the LDRs. This National Capacity Variance expired in May 1992, and the Department has applied for a one-year CBC Extension to the variance, which is renewable for one additional year. Thus, all potentially available relief for this waste will be exhausted by mid-1994. Nevertheless, because treatment is not expected to be widely available by mid-1994, the subsequent storage of most newly generated mixed waste will not comply with the LDR storage prohibition.

Federal Facility Compliance Act of 1992

On October 6, 1992, new legislation was enacted that includes provisions concerning DOE compliance with RCRA LDR requirements for mixed waste. Among other things, the Federal Facility Compliance Act provides that:

- For a period of three years after the date of enactment, the waiver of sovereign immunity contained in section 6001(a) of RCRA, as amended with respect to civil, criminal, and administrative penalties and fines shall not apply to the federal government for violations of the LDR storage prohibition in Section 3004(j) of RCRA that involve mixed waste. This provision applies only to federal facilities that are not subject to an existing agreement, permit, or administrative or judicial order that address compliance with the RCRA LDR storage prohibition for mixed wastes.
- After three years, the waiver of sovereign immunity shall not apply to DOE sites for violations of the RCRA LDR storage prohibition for mixed wastes if the DOE site is in compliance with an approved site-specific mixed waste treatment plan and an order requiring compliance with the site-specific plan.
- For DOE sites that generate or store mixed waste, DOE must submit to the EPA or authorized State a site-specific plan containing schedules for developing treatment capacity and/or technologies for treating the site's mixed wastes. The site-specific plans may provide for centralized, regional, or on-site treatment of mixed wastes. (DOE must also provide information about any plans for radionuclide separation of mixed wastes.) This provision does not apply to DOE sites that are already subject to a permit, agreement, or administrative or judicial order governing the treatment of mixed wastes, to which the State is a party. Moreover, a State may elect to waive the site-specific plan requirement and instead enter into an agreement with DOE that addresses compliance with the storage prohibition and issue an order requiring compliance with the agreement.
- DOE must publish a schedule for submitting the site-specific plans in the **Federal Register** not later than 6 months after the date of enactment. DOE must also submit progress reports to Congress 1, 2, and 3 years after the date of enactment that describe the status of DOE submission, regulator review, and implementation of the site-specific plans.
- EPA or the authorized State must approve, approve with modifications, or disapprove the site-specific plans within 6 months from receipt. In making this determination, EPA or the authorized State must consider the need for regional treatment facilities and consult with each other, as well as with any other State in which a facility affected by the plan is located. EPA or the authorized State must also publish a notice of availability of site-specific plans received and consider public comments in making determinations on the plans. Upon approval of a plan, EPA or the authorized State must issue an order under the appropriate authority requiring compliance with the approved plan.

In effect, these provisions of the Federal Facility Compliance Act require DOE to have approved site-specific mixed waste treatment plans and related orders in place three years from the date of enactment in order to avoid the imposition of fines and penalties (except for sites already subject to a permit, agreement, or order addressing compliance with the RCRA LDR storage prohibition).

The Act also contains several other provisions related to mixed waste management. Not later than 180 days after enactment, DOE must submit to EPA and each State in which the Department stores or generates mixed waste a Mixed Waste Inventory Report and a Plan for Development of Treatment Capacities and Technologies. In brief, the Inventory Report must contain:

- A description of each mixed waste (waste name, EPA hazardous waste code, basis for identifying the waste code, source of waste, etc.);
- The amount of waste currently in storage and estimated generation for the next 5 years;
- A description of waste minimization activities for each mixed waste stream; and
- An identification of the LDR treatment technology specified for each mixed waste, with an explanation of whether and how the radionuclide content affects the use of the technology.

In brief, the Plan for Development of Treatment Capacities and Technologies must contain:

- An estimate of the treatment capacity available for each waste for which treatment technologies currently exist, with a description of available treatment units;
- A description of any treatment units not considered in calculating this available capacity and the rationale for not including the units;
- A description of the treatment units currently proposed to increase the available capacity; and
- For each waste where DOE has determined that treatment technologies do not currently exist, information supporting this determination and a description of the technological approaches that DOE anticipates will be needed for these wastes.

DOE intends to comply with all of the provisions of the Federal Facility Compliance Act. The Department will use the best information available to develop the Mixed Waste Inventory Report and Plan for Development of Treatment Capacities and Technologies for submittal to EPA and States in 180 days. The draft National Compliance Plan, scheduled to be made available for public comment approximately one year after enactment of the Federal Facility Compliance Act, will incorporate analyses of additional information on needed treatment technologies and facilities and be expanded to address other waste management activities (e.g., characterization, disposal) that affect waste treatment.

While DOE will comply with all requirements of the Federal Facility Compliance Act, the focus of this Strategy is on development of the National Compliance Plan and use of this plan as input to development of the site-specific plans required by the Act.

Current DOE Mixed Waste Generation and Inventory Data, Treatment Needs, and Research and Development Efforts

Mixed Waste Inventories and Treatment Needs. The Department's stored and currently generated mixed waste streams are listed in Attachment A of this Strategy. The Department estimates that it produces over 90 percent of the nation's low-level mixed waste and virtually all high-level and

transuranic mixed waste.[1] Low-level, transuranic, and high-level wastes are listed separately by treatability group. (Treatability groups are categories within which different wastes are amendable to similar types of treatment because they share similar characteristics that affect treatment performance.) The information in Attachment A and this subsection is based on the Department's November 1991 effort to prepare a CBC Extension application for mixed waste streams subject to the "Third-Third" LDR rule. Although the extension request applied only to Third-Third mixed waste, in certain areas the analysis supporting the application considered all DOE mixed waste known to be subject to the LDRs at the time (i.e., mixed waste containing solvent, dioxin, and California list waste), based on best available data.

The Department is continually refining these data as its waste characterization efforts progress and its activities change, and intends to update the list of waste streams and treatability groupings during development of the National Compliance Plan. The Department expects the number of mixed waste streams to increase as a result of waste characterization efforts that identify additional mixed waste streams, cleanup activities that generate new waste streams, and other factors. The updated information will be provided to the EPA, States, and public as part of the National Compliance Plan process. The Mixed Waste Inventory Report and Plan for Development of Treatment Capacities and Technologies described in the proceeding subsection will be two vehicles for providing updated information on mixed waste streams and treatment facilities.

As indicated by the CBC Extension application data, the Department stores approximately 530,000 cubic meters of LDR mixed waste at 30 facilities (some facilities generate, but do not store, mixed waste), and generates an additional 52,000 cubic meters of mixed waste per year. Together, the stored and generated wastes represent approximately 700 different waste streams. As part of the CBC Extension effort, the Department performed an assessment of its 700 mixed waste streams to determine treatment technologies necessary to provide LDR compliant treatment.

As a result of this assessment, the Department's 700 mixed waste streams were categorized into 53 treatability groups. Based on (1) treatment technologies required by LDR treatment standards that are expressed as specified technologies, or (2) the Best Demonstrated Available Technology (BDAT) specified by EPA for waste streams with LDR treatment standards that are expressed as concentration limits or deactivation, the 53 treatability groups fell into eight RCRA treatment technology categories.[2] Thermal treatment (e.g., incineration) was by far the most often specified treatment technology, with a minimum of 19 treatability groups planned to be managed using this technology. Stabilization was the second most commonly specified treatment technology (and, based on current data, will be the technology needed to treat the largest volume of DOE's mixed waste), followed by lead decontamination/macro-encapsulation for radioactive lead solids. Vitrification has been identified in the LDR regulations as the BDAT for high-level wastes. Other treatment technology categories were oxidation/water reaction, cyanide destruction, ion exchange, and debris management techniques. Defense-related transuranic waste is scheduled for disposal in the Waste Isolation Pilot Plan (WIPP), a deep underground repository, assuming all necessary final approvals are obtained. EPA has granted DOE a no-migration variance to conduct the test phase at this facility. If EPA approval of a variance for final operation of the facility is granted, treatment of these transuranic wastes to meet LDR treatment standards will not be required, although some treatment to meet transportation requirements and WIPP acceptance criteria may be needed.

Although potential applicable treatment technologies for the Department's mixed waste streams have been identified for approximately 75 percent (by volume) of the Department's stored and currently generated waste, based on the 1991 CBC Extension data, additional capacity and technology development is required. For the most part, technology development involves modifying existing technologies to handle the Department's mixed wastes, but some new technologies will also be needed for certain problematic waste streams. Overall, capacity within DOE and in the commercial sector is currently inadequate to treat DOE's mixed wastes. Although capacity in the private sector is limited at present, the Department has used and plans to use commercial facilities to treat some of its mixed waste and is now soliciting assistance from the commercial sector in developing mixed waste treatment technologies and capacity. This is being accomplished through workshops with industry to explain DOE needs direct procurement, Program Research and Development Acquisition (PURDA), Cooperative Research and Development Agreement (CRADA), Broad Agency Announcement (BAA), and Small Business Innovative Research (SBIR).

It is important to note that the above generation and inventory data does not include the potential substantial amounts of contaminated soil and debris that will be generated by the Department's future cleanup efforts at approximately 3,700 contaminated sites and D&D of approximately 500 facilities. The Department will not know the specific amounts and types of waste that will be generated from these remedial actions and D&D activities until hundreds of RCRA Facility Investigations/Corrective Measures Studies and CERCLA Remedial Investigations/Feasibility Studies and D&D Work Plans have been completed and remedies are selected. While technology development is underway for different types of cleanup wastes, it is difficult to accurately predict the technologies needed and quantities of waste to be treated in situ versus in treatment facilities until remedial action decisions are made pursuant to the applicable cleanup law or process. Thus, planning for adequate capacity to be available in a timely fashion will continue to be a challenge for the Department's mixed waste management program.

Technology Development Activities. Recognizing the need to support DOE's national planning efforts for mixed waste treatment, the Department's Office of Technology Development created a Mixed Waste Integrated Program (MWIP). The mission of the MWIP is to develop, test, and evaluate, for deployment, complete and appropriate technologies for the treatment of all DOE mixed low-level wastes, including alpha-contaminated wastes.

Goals have been established to achieve the stated mission through both development of innovative technology and evaluation of existing technology to solve mixed waste treatment problems. These goals are as follows:

- Assess whether production of enhanced final waste forms (e.g., glass, ceramic) for low-level mixed waste

[1] An estimate based on comparing Department generation data with those from the *National Profile of Commercially Generated Low Level Radioactive Mixed Waste*, Martin Marietta Energy Systems, Inc., August 14, 1992.

[2] These treatment categories are based only on the Third-Third LDR rule treatment requirements. Additional categories may be required when treatment requirements under the solvent, dioxin, and California list LDR rules are included in the analysis.

would result in better process performance, lower life-cycle costs, and lower risk than conventional treatment and stabilization systems.

- Improve upon conventional treatment technologies, as appropriate.
- Provide technical review of, provide key technical requirements for, monitor progress of, and incorporate data from on-going technology development initiatives to support a national strategy for mixed waste treatment and site-specific enforceable commitments.

The MWIP uses a systems approach to technology development to ensure that all needs are identified and met. Technical experts from throughout the DOE complex have been recruited to support the MWIP and to bring the resources of the complex together to solve mixed waste treatment problems. This organization of experts will provide technical specifications (e.g., requests for proposals, statements of work) to solicit industrial participation in technology development to resolve specific mixed waste treatment problems. Individual research, development, demonstration, testing, and evaluation tasks are integrated by the MWIP to ensure that the goals and deadlines associated with technology development for the national and site-specific mixed waste management programs are met.

The Office of Technology Development also has technology development efforts underway for transuranic and high-level wastes in the area of waste management. For example, characterization and retrieval technologies are being developed for transuranic wastes, and radionuclide separation technology (i.e., separation of the radioactive and hazardous components of the waste) is being explored for high-level wastes. In addition, extensive technology development efforts are underway to support environmental restoration activities.

Need for a National Compliance Plan for DOE Mixed Waste

The Department believes that a two step process—development of a national plan followed by development of site-specific plans—is the most prudent and, with the support of EPA and the States, viable approach to managing its mixed waste program and meeting the requirements of the RCRA LDRs and Federal Facility Compliance Act. Further, this approach is consistent with the Act's specific recognition that DOE may propose centralized and regionalized treatment facilities in the site-specific plans to provide needed treatment capacity and the requirement that EPA and the States consider the need for regional treatment facilities. A number of factors contribute to the need for the development of a national plan, in conjunction with the EM programmatic environmental impact statement (PEIS), which is discussed further in Section 3, including the following:

- The RCRA LDRs generally require treatment of hazardous and mixed waste prior to disposal. Although most of the Department's hazardous waste is treated in commercial treatment facilities, adequate treatment capacity for mixed waste does not currently exist in the private sector or in DOE, nor are treatment technologies adequately developed for all mixed waste streams. To address this complex-wide need, the Department requires a national plan to ensure that adequate capacity and appropriate technologies are developed in a cost-effective and coordinated manner to treat mixed waste to meet LDR standards for all DOE sites.

For low-level mixed waste in particular, DOE sites are currently making decisions on the selection of treatment technologies, development of facility design and waste acceptance criteria, and definition of characterization requirements on an individual, site-specific basis. This approach is a high-cost, inefficient method of meeting the mixed waste management needs of the DOE complex that may result in unnecessary duplication of efforts among sites. DOE is only one of many programs competing for limited taxpayer dollars. Development of a nationally coordinated waste management program can promote sound fiscal management of taxpayer dollars by optimizing technology development efforts and the use of facilities.

- Site-specific agreements or plans without a national planning process may not adequately consider the cumulative environmental impacts of the Department's mixed waste management decisions. To address this concern, DOE is developing an EM PEIS and proposes to coordinate the National Compliance Plan with the PEIS to ensure adequate consideration of these impacts.
- At some DOE sites, regulators have restricted receipt of off-site or out-of-state wastes in waste management permits for treatment facilities and other types of waste management units. In setting these restrictions, States have expressed concerns about the equitable distribution of DOE mixed waste TSD facilities across the nation. If these restrictions were to be applied at each of the 37 DOE sites currently managing mixed waste, however, they may result in a costly duplication of TSD facilities with little environmental or health benefit. In fact, constructing and operating TSD facilities for every mixed waste stream at every DOE site may use time, effort, and money that could otherwise be used on other environmental projects.

DOE believes it should work with States to address these equity concerns through the EM PEIS and National Compliance Plan process to determine if an efficient and equitable approach to siting mixed waste TSD units can be agreed upon. The EM PEIS will provide a comprehensive analysis of the impacts of siting TSD facilities locally versus consolidating some of these facilities. States and citizens will be provided an opportunity to participate in these analyses and to work with DOE to analyze equitable approaches to consolidation. If the option of consolidating some facilities is supported by these analyses, the national planning processes can also provide the vehicle for DOE to work with States and citizens to identify incentives and measures to mitigate any potential impacts that result from such consolidation.

- Mixed waste is generated in many States by universities, hospitals, and private entities. These States have various waste management problems and the Department believes that DOE and the States should explore cooperative efforts to resolve these problems. States and the Department face many of the same issues associated with the cleanup, treatment, storage, and disposal of mixed waste (e.g., lack of technologies, local opposition to facility siting, costs of treatment and disposal facilities). Significant opportunities may exist to address cooperatively the development and application of the technology necessary to resolve these issues in a manner that will optimize the use of State and Federal government resources.
- The process for funding, designing, permitting, and constructing treatment facilities for mixed waste can take 5 to 15 years. A national planning process may help reduce the timeframes needed to bring treatment capacity on line by: involving the public and States early in the technology evaluation process; providing a comprehensive picture of DOE's proposed plans for mixed waste treatment and disposal; and standardizing technologies and supporting documentation (e.g., NEPA and safety documentation) to the extent possible

• Development of adequate treatment capacity for mixed waste will necessitate the long-term storage of substantial volumes of mixed waste, which is prohibited under the LDR storage prohibition of RCRA. The need for long-term storage exists (1) where RCRA-compliant mixed waste treatment technologies exist, or may soon be available, but a large backlog of waste awaits treatment; and (2) where characterization to identify RCRA hazardous waste codes has been accomplished, but additional characterization is needed to identify treatment and disposal requirements.

• The Department has been negotiating compliance agreements with its regulators on a case-by-base, site-specific basis to allow continued storage of LDR mixed waste and to establish schedules for developing adequate treatment capacity. To date, most compliance agreements have been signed for DOE sites that are major generators of mixed waste and, therefore, are planning to treat most of their mixed waste on site. These large sites are also those that are more likely to have the technical expertise and resources needed to develop and operate treatment facilities on site. Because these sites generally have had the necessary technical expertise and resources and because the construction of on-site capacity does not require agreement from other States or DOE sites, it has been easier for these sites to make commitments to develop treatment capacity in compliance agreements.

• However, it will be more difficult for smaller sites to develop site-specific agreements (and site-specific plans pursuant to Federal Facility Compliance Act requirements) without the benefit of a national plan. For smaller sites that generate small volumes of mixed waste, constructing treatment facilities on site for each of their waste streams may not be the most efficient, cost-effective, and environmentally protective approach to providing treatment, nor do these sites necessarily have existing technical expertise that is necessary to develop comprehensive treatment capacity. In addition, even some large sites have small volume waste streams which would be centrally or regionally treated. The EM PEIS process will provide the framework for determining whether such consolidated facilities are appropriate and where they should be located. The National Compliance Plan process will provide input to this analysis by identifying and matching waste stream-specific treatment needs across the DOE complex. Site-specific agreements do not accomplish this purpose.

• In considering plans to transfer waste from one site to another, a national approach will also provide the vehicle for the regulatory agencies and public on both sides of the transfer to be involved in these plans in a two-way dialogue and to understand the whole picture. Site-specific agreements do not provide for such involvement or understanding.

• Substantial quantities of mixed waste are likely to be generated by the Department's ongoing and future environmental restoration and decommissioning activities, but the potential amounts and types of waste that will be generated and require treatment cannot be accurately determined until hundreds of RCRA Facility Investigation/Corrective Measures Studies, CERCLA Remedial Investigation/Feasibility Studies, and D&D Work Plans have been completed and remedies have been selected. Waste resulting from cleanup and decontamination activities presents the Department with as yet largely undefined technological challenges and obstacles. The Department needs to ensure that information from these activities is integrated into the Department's planning for the development of mixed waste treatment, storage, and disposal capacity. Site-specific approaches to technology development and TSD facility construction would not provide for the optimum use of the Department's resources to manage these potentially large volume mixed waste streams.

The development of a National Compliance Plan is an important step toward addressing these needs. The National Compliance Plan would replace the current inefficient, fragmented approach to managing mixed waste with a coordinated plan that would incorporate the input of interested parties, allow technology and capacity development to proceed in the most cost-effective and expeditious manner possible while miniziming environmental impacts, and identify opportunities for cooperative DOE and State efforts.

Other Wastes Addressed by the National Compliance Plan for DOE Mixed Waste

"Mixed waste" is defined as a waste that contains hazardous waste regulated under RCRA and source, special nuclear, or byproduct material regulated under the AEA. In the National Compliance Plan, DOE will address mixed waste as well as two additional categories of waste that pose similar management problems and, in many cases, may require similar types of treatment. The first of these additional categories is waste that is both hazardous and radioactive, but the hazardous component is regulated only under State law, not Federal law. Some States, such as California, have hazardous waste laws that regulate more materials as hazardous than RCRA does. The second category is radioactive waste that contains polychlorinated biphenyls (PCBs) but no RCRA hazardous waste component. PCBs are regulated under the Toxic Substances Control Act (TSCA). To meet TSCA requirements, some radioactive waste contaminated with PCBs will require treatment before disposal, but, as with mixed waste, treatment capacity for these wastes is currently limited.

Section 3—Proposal for a National Compliance Plan for DOE Mixed Waste

The Department proposes to develop, with input from the EPA, NRC, DOT, States, Indian Tribes, and interested members of the Public, a National Compliance Plan to create an integrated and national approach to the development of mixed waste treatment technologies and capacity and the overall management of mixed waste. Although the National Compliance Plan will address the spectrum of DOE's mixed waste management activities, and major focus of the plan will be on the development and use of mixed waste treatment technologies, including associated research and development (R&D) efforts. It will also be important to address the waste acceptance criteria for disposal of the mixed waste, because the treatment technologies selected for a waste must produce a waste form acceptable at the intended disposal site.

The Department believes that the development and implementation of the National Compliance Plan should be guided by the following policy objectives:

• DOE must undertake a national approach to solving national problems involving substantial volumes of mixed waste with unique technological and safety considerations.

• The development of the National Compliance Plan must involve all affected parties (e.g., DOE, EPA, States, Indian Tribes, public) because the implementation and ultimate success of the plan will depend upon their involvement and support.

• The Department and the States should explore the potential for sharing their waste management resources.

Development of the National Compliance Plan will be carefully

coordinated with other Departmental planning efforts. As previously noted, one of the key planning documents that will be closely related to the National Compliance Plan is the Department's EM PEIS, being prepared pursuant to NEPA. The EM PEIS will assess the potential environmental impacts associated with alternatives for environmental restoration and waste management program activities to assure decisions are made with full consideration of the environmental impacts of the proposed action and alternatives. The waste management section of the EM PEIS will include evaluation of a range of strategic alternatives for the configuration of TSD facilities for mixed waste across the DOE complex (generally from maximum consideration of TSD facilities to minimum consolidation to local siting) and will identify one of the strategic configuration alternatives as the proposed action.

While the EM PEIS will evaluate a broad range of TSD configuration alternatives, the National Compliance Plan will evaluate options for TSD facility technologies and standardized facility designs. TSD technologies for facilities at specific sites would be proposed in the site-specific plans required by the Federal Facility Compliance Act and subject to appropriate NEPA review prior to implementation. The National Compliance Plan will also evaluate options for more detailed technical and policy issues related to mixed waste management (e.g., standardized data reporting requirements, waste characterization issues). Finally, the National Compliance Plan will constitute a framework for long-term management of the Department's mixed waste activities, including implementation of decisions made in EM PEIS ROD. The DOE teams developing the EM PEIS and National Compliance Plan will work closely together through out their preparation to ensure that the EM PEIS bounds the environmental impacts of the TSD technology options being considered in the National Compliance Plan.

The National Compliance Plan is also intended to build upon existing DOE comments (e.g., agreements, orders, permits) to construct mixed waste treatment capacity and undertake other mixed waste management activities. The development of the National Compliance Plan will begin with an assessment of commitments for existing and planned mixed waste management facilities and activities and, as the plan progresses, will evaluate whether modifications or additional actions are needed. DOE proposes substantial EPA and State involvement throughout development of the National Compliance Plan, so that regulatory agencies will be able to provide substantive input to the evaluations. If these cooperative evaluations indicate a need to revise an existing commitment, DOE would request the revision through the mechanism appropriate for that commitment (e.g., for compliance agreements, generally the modification clause). During development of the National Compliance Plan, however, DOE would continue to use the treatment capacity that already exists and would continue to meet its existing commitments.

For example, DOE might have a commitment under a federal facility compliance agreement to construct a treatment facility that will stabilize waste using concrete or fly ash. As part of the National Compliance Plan process, DOE may propose to evaluate whether a different type of treatment could produce a more stable waste form (e.g., glass or ceramic). Regulatory agencies would have an opportunity to comment on the methodology used for the evaluation. If an evaluation indicated that a different type of treatment would produce a more environmentally sound waste form and was otherwise reasonable (considering health risks, cost, schedule, etc.), DOE would propose to modify the existing commitment pursuant to the requirements of the compliance agreement. Work on meeting existing schedules in the agreement would not stop unless approved by the regulatory agency. If approved, appropriate NEPA review of the modified action would be conducted prior to implementation.

The Department proposes to develop the National Compliance Plan over a three-year period, as shown in Figure 1 The beginning of the process will focus on development of a national mixed waste management plan in parallel with preparation of the EM PEIS. The results of these national planning efforts would then be incorporated into site-specific plans. The activities contained in the site-specific plans (e.g., constructing a new treatment facility) will undergo appropriate NEPA review before implementation. The proposed process is consistent with the requirements of the recently enacted Federal Facility Compliance Act, which requires DOE to submit site-specific plans to the EPA and States containing schedules for providing treatment capacity for mixed waste streams at the site. The proposed activities during the three-year period include the following:

- **October 1992–1993**

—Develop draft National Compliance Plans and EM PEIS and issue for public comment
—Develop consistent format and content for site-specific plans

- **October 1993–1994**

—Issue final EM PEIS
—Begin preparation of final National Compliance Plan
—Begin preparation of site-specific plans in conjunction with preparation of final National Compliance Plan

- **October 1994–1995**

—Publish EM PEIS ROD
—Submit final National Compliance Plan to EPA/States for comment.
—Complete site-specific plans and submit to EPA/States for approval.

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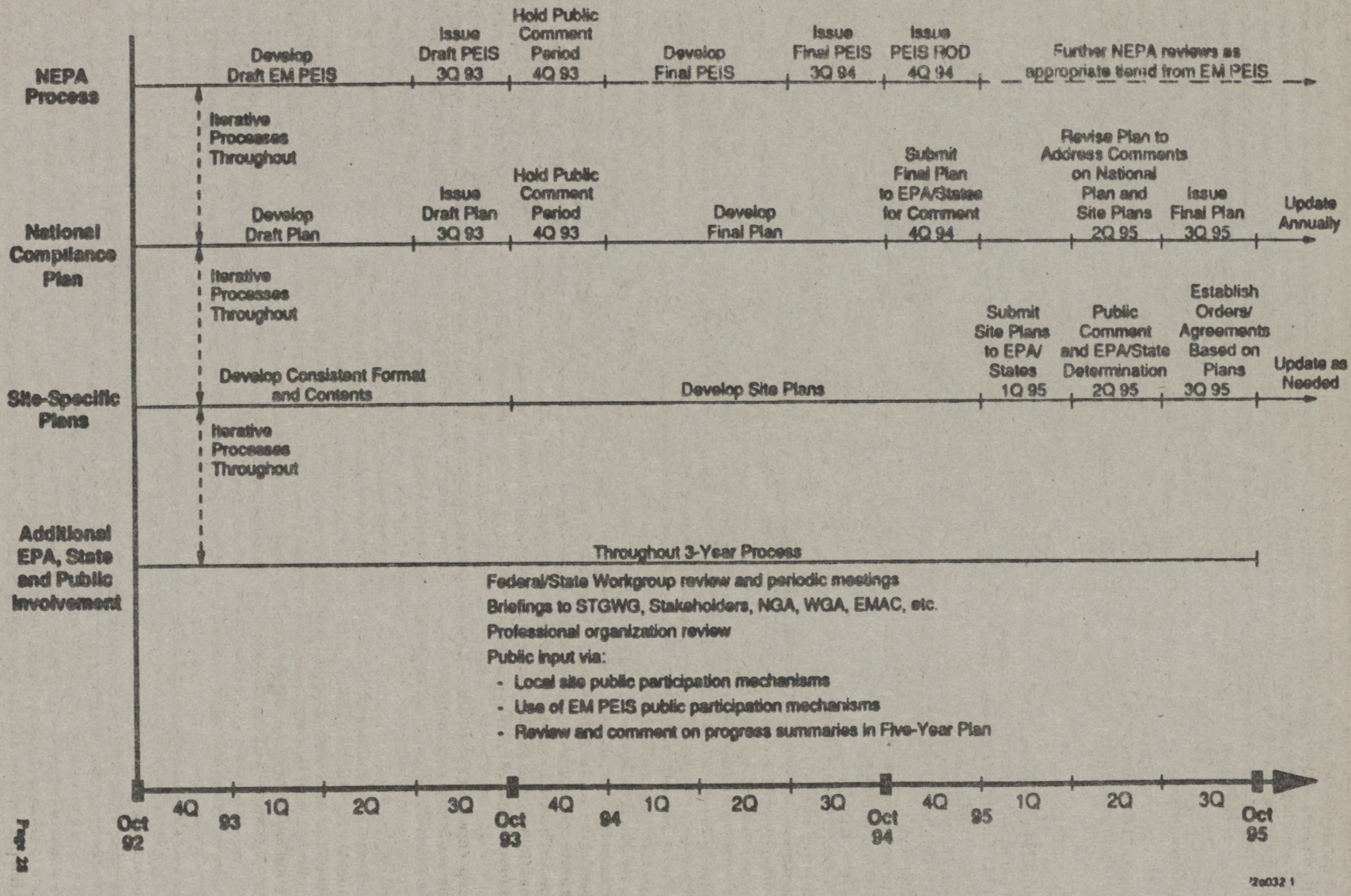
Figure 1: National Compliance Plan for DOE Mixed Waste Schedule
(in calendar year quarters)



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The following sections describe in greater detail the Department's proposal for the contents of the National Compliance Plan, the process for its development, and coordination of the National Compliance Plan with other DOE environmental planning efforts.

Proposed Contents of the National Compliance Plan for DOE Mixed Waste

The National Compliance Plan will be developed over a three-year period and contain the components described below.

Year 1 (10/92–10/93)

A draft National Compliance Plan will be prepared in conjunction with the draft EM PEIS. The draft National Compliance Plan will include the following components for each type of mixed waste (low-level, transuranic, and high-level):

- Current state;
- Systems analysis; and
- Strategic plan.

The draft National Compliance Plan will also include the following components:

- Summary of DOE waste minimization activities; and
- Integration strategy for environmental restoration and D&D mixed waste.

These components of the draft National Compliance Plan are described further below. The EPA, NRC, DOT, States, Indian Tribes, and interested members of the public will have an opportunity to provide comments on the draft plan. The draft EM PEIS and National Compliance Plan will be issued for public comment at the same time.

During Year 1, DOE will also establish a consistent format and content for site-specific plans.

Current State

This component of the draft National Compliance Plan will provide a comprehensive technical description of the current status of DOE mixed waste (generation and inventory), waste management capacity (characterization, storage, treatment, and disposal), and transportation systems. It is important that data on the Department's current mixed waste streams and management capacities be included in the National Compliance Plan to identify DOE's mixed waste management needs (e.g., waste characterization, technology development) and to support the various analyses required to make decisions to address these needs. This part of the plan also will include a description of DOE's existing mixed waste management commitments (e.g., agreements, orders, permits). In addition, current R&D activities underway in the Department related to the management of mixed waste (including the development of treatment technologies) will be discussed. Finally, this component will describe the current RCRA LDR treatment standards and how they apply to mixed waste, since these requirements are primary drivers in the development of mixed waste treatment technologies.

Systems Analysis

The second component of the draft National Compliance Plan will evaluate options for managing the treatment and disposal of the Department's mixed waste. This analysis will begin with a brief summary of the key baseline information in the current state component, and evaluate the options the Department could pursue in the future to manage these mixed waste activities. Options to be evaluated include:

- Options for final waste form based on disposal waste acceptance criteria and treatment technology development based on the final waste form;
- Options related to the future direction of other aspects of DOE's mixed waste management programs directly related to treatment and disposal (e.g., data collection and reporting, characterization technologies and capacity, storage facility design and capacity, transportation system and subsystem development); and
- Options for implementing the final decisions.

Use of the commercial sector to develop technologies and provide mixed waste management capacity will also be considered. In addition, the use of different regulatory mechanisms to meet environmental requirements will be considered where appropriate. For example, several approaches are available to meet LDR requirements: meet existing treatment standards; petition for a new treatment standard for a specific mixed waste stream; obtain a no migration petition variance; or obtain a treatability variance.

The options considered in this analysis will be compared based on factors such as technical feasibility, cost, schedule, waste minimization, risk (to the public, environment, and workers), and public acceptability. They will also be evaluated to determine if they have an impact on existing DOE commitments (e.g., agreements, orders, permits).

This systems analysis will be closely coordinated with the waste management alternatives analysis of the EM PEIS. The EM PEIS will evaluate strategic options for TSD facility locations (generally from maximum consolidation to minimum consolidation to local siting). For consolidation options, the EM PEIS will also consider which DOE sites would transport wastes to regional or central facilities. The National Compliance Plan analysis will evaluate options for technologies and designs for TSD facilities, as well as other more detailed technical and policy issues related to the Department's mixed waste management program. This analysis would provide the basis for the development of the site-specific plans. Activities proposed in the site-specific plans would be subject to appropriate NEPA review prior to implementation.

For example, although the EM PEIS analysis will assess different low-level mixed waste treatment facility configuration alternatives on the basis of generic mixed waste treatment facilities to bound potential environmental consequences, it will not evaluate, for a particular site or location on a site, the variety of treatment technologies that could be developed to meet regulatory requirements at the selected site. The National Compliance Plan will evaluate treatment technology alternatives and treatment facility designs. This evaluation would provide the basis for proposing technologies in the site-specific plans.

The purpose of this report will be to provide DOE, EPA, States, Indian Tribes, and the public the information necessary to evaluate the advantages and disadvantages associated with different long-term mixed waste management strategies. The next component of the draft National Compliance Plan—the Strategic Plan, described below—will propose DOE's preferred mixed waste management strategy. This System Analysis will document the basis for this proposal.

Strategic Plan

The third component of the draft National Compliance Plan will present the Department's preferred approach for developing and utilizing treatment technologies and facilities, including the R&D program that would support this approach. It will also describe DOE's preferred approach for the other waste management options considered in the Systems Analysis. In addition, to provide a complete picture of DOE's proposed mixed waste management program in one document, it will describe the Department's preferred future configuration of TSD facilities, based on the EM PEIS waste management proposed action. Further, this component will describe the Department's overall objectives and

goals to guide the development of its mixed waste management programs and facilities. To the extent that DOE's proposed program differs from existing commitments (e.g., agreements, orders, permits), those differences will be identified.

It is important to note that it may not be possible to determine the preferred end result of all DOE mixed waste management activities in this component. In some cases, further studies (e.g., technology testing) may be required before a preferred final strategy can be identified. The Strategic Plan component will identify those elements that require further analysis.

Again, preparation of this portion of the draft National Compliance Plan will be closely coordinated with the EM PEIS and will proceed on a parallel schedule. It is important that DOE develop its preferred mixed waste management strategy in detail during preparation of the EM PEIS to ensure that the PEIS bounds the potential environmental impacts of the TSD technologies that are included in the preferred approach. Additional NEPA documentation will be prepared as needed.

Integration Strategy for Environmental Restoration and Decontamination and Decommissioning Mixed Waste

The fourth component of the draft National Compliance Plan will describe the Department's strategy for integrating its environmental restoration and D&D activities with its mixed waste management program. As noted earlier, the Department expects to generate substantial quantities of mixed waste from its cleanup and D&D activities and must ensure that technology development for this waste is coordinated with that for process waste streams to achieve maximum efficiency and cost-effectiveness. Data from the cleanup and D&D programs on waste stream characteristics and quantities, evaluation of technology options, and final technology selection must be shared with mixed waste management program personnel, and decisions must be made as to who will be responsible for providing technology development and capacity for their wastes. Although these wastes may be treated in situ in some cases, in others they may require management in separate TSD facilities. In the latter case, DOE must coordinate efforts to provide needed capacity for process waste streams, cleanup wastes, and D&D wastes. This component of the National Compliance Plan will explain DOE's overall strategy for accomplishing this integration; each of the previous components of the National Compliance Plan described above will also reference these efforts where appropriate.

Summary of DOE Waste Minimization Activities

For purposes of providing an overall picture of DOE's waste management efforts, the National Compliance Plan will also summarize the Department's Waste Minimization Crosscut Plan, which sets forth a Department-wide planning structure for effective coordination of DOE waste minimization activities. In addition, this component of the National Compliance Plan will summarize mixed waste minimization efforts at DOE sites. It will highlight the work that has been completed to reduce waste and describe the status of ongoing waste minimization efforts.

Site-Specific Plans

As discussed in Section 2, the Federal Facility Compliance Act requires DOE to develop site-specific mixed waste treatment plans. During Year 1, in addition to developing the draft National Compliance Plan, DOE will develop a consistent format and content for the site-specific plans. The site-specific plans will focus on those activities necessary to meet the requirements of the Act. In brief, these plans will include: (1) a description of the mixed wastes generated and stored at the site; (2) a proposed schedule for using existing treatment facilities and/or developing new or modified treatment facilities for these wastes; and (3) if applicable, a description of the Department's proposal for radionuclide separation of mixed wastes at the site.

Year 2 (10/93–10/94)

After consideration of comments, a final EM PEIS will be issued. Development of the final National Compliance Plan will begin in Year 2. Preparation of site-specific plans will also begin, considering comments received on the EM PEIS and draft National Compliance Plan.

Year 3 (10/94–10/95)

The EM PEIS ROD will be issued. After consideration of comments on the draft National Compliance Plan and incorporation of decisions made in the EM PEIS ROD, a final National Compliance Plan will be submitted to EPA and States for comment. The final National Compliance Plan will include:

- Comprehensive implementation plan (for each mixed waste type); and
- Report on the results of exploring potential cooperative DOE and State mixed waste management efforts.

The two components of the final National Compliance Plan are described further below.

The site-specific plans will be completed during Year 3, incorporating decisions made in the ROD and the proposed actions in the final National Compliance Plan. The plans will be submitted to EPA or the appropriate States for approval.

Comprehensive Implementation Plan

This component of the final National Compliance Plan will describe the Department's final mixed waste management plan, after consideration of public comments on the draft National Compliance Plan and incorporation of decisions made in the EM PEIS ROD. This component will also describe the activities necessary to implement the plan for each mixed waste type (including any additional activities needed to reach final decisions on a final plan, where necessary) and provide proposed schedules for accomplishing these activities. Proposed schedules will be included for:

- Utilizing and upgrading existing mixed waste treatment capacity;
- Developing new mixed waste treatment technologies;
- Submitting necessary applications for permits or permit modifications for treatment facilities; and
- Constructing and utilizing new waste treatment facilities.

The activities in this component of the plan will likely encompass the entire spectrum of mixed waste management activities (i.e., minimization, treatment, storage, disposal, transportation, characterization, regulatory initiatives), but the level of detail may vary for these different types of activities. Primary emphasis will be placed on activities that impact the development of treatment facilities and treatment of waste. Some proposed schedules will be proposed at the national level in this document, while others will be developed in detail in the site-specific plans. As noted above, at a minimum, the site-specific plans will incorporate the proposed national plan schedules for utilizing and/or developing treatment capacity for mixed wastes generated and stored at the site. If any schedules or activities in the national plan are not consistent with an existing DOE enforceable commitment (e.g., compliance agreements, orders, permits), DOE will request modification of the commitment through the appropriate mechanism.

After consideration of EPA and State comments, the Comprehensive Implementation Plan component of the

final National Compliance Plan will thereafter be updated on an annual basis to:

- Describe progress achieved in meeting site-specific and national schedules;
- Refine and update future schedules as needed (for site-specific schedules, reflecting changes approved by regulators); and
- Continue analysis of new information as it becomes available

This document will describe the framework for the long-term direction and implementation of the Department's mixed waste management program.

Report on Cooperative DOE and State Mixed Waste Management Efforts

The final National Compliance Plan will also describe areas in which the States and DOE can cooperate to address waste management needs for non-DOE waste (e.g., waste from universities hospitals, Department of Defense operations), if such cooperative projects are identified and agreed upon. The Department recognizes that States and DOE share many of the issues and challenges associated with the management of wastes. Consistent with the concept of undertaking a national approach for management of mixed waste, the Department wants to work with States to identify areas for DOE participation in the solutions to States' waste management problems, such as potentially sharing in the development and application of remediation and treatment technologies. Joint projects or pilot demonstration projects may be appropriate under agreements such as the July 1991 Memorandum of Understanding between the Department and the Western Governors' Association.

Proposed Process for Development of the National Compliance Plan for DOE Mixed Waste

EPA, State, and public participation are essential to the success and credibility of the proposed National Compliance Plan. The Department proposes to involve these parties fully in the preparation and implementation of the National Compliance Plan. Toward this end, the Department proposes to:

- Organize a Federal/State National Compliance Plan Workgroup, to be comprised of technical and policy representatives from the DOE, EPA, NRC, DOT, and State regulatory agencies, to coordinate collection of information necessary to support this effort and provide recommendations on the National Compliance Plan and site-specific plans as they are being formulated;
- Conduct periodic meetings of the National Compliance Plan Workgroup to review progress on the development of the national and site-specific plans;
- Use other existing mechanisms for additional public, State, Tribal, and local government input throughout preparation of the National Compliance Plan and site-specific plans—such as meetings of the State and Tribal Government Working Group, the Stakeholders Forum, the Western Governors' Association, the National Governors' Association, and the Environmental Restoration and Waste Management Advisory Committee (EMAC);
- Identify appropriate professional organizations (e.g., National Academy of Science) to provide recommendations on development of the National Compliance Plan and site-specific plans;
- Develop a mailing list of parties interested in reviewing the draft National Compliance Plan;
- Provide all interested parties an opportunity to review and comment on the draft National Compliance Plan by publishing a notice of availability in the Federal Register and distributing copies to those on the mailing list (as required by the Federal Facility Compliance Act, EPA and the States would make site-specific plans available for public review);
- Provide local governments, Indian Tribes, and other interested parties in the vicinity of DOE sites an opportunity to provide input on the National Compliance Plan and site-specific plans through use of existing public participation mechanisms at the sites;
- Use ongoing public participation activities related to development of the EM PEIS to inform the public of development of the National Compliance Plan and site-specific plans and their relationship to the EM PEIS;
- Update the National Compliance Plan on an annual basis once completed, and make this update available to EPA, the States, Indian Tribes, and the public;
- Summarize progress reached on development and implementation of the National Compliance Plan in the Department's annual Five-Year Plan; and
- Provide for effective EPA and State involvement in the Department's implementation of the National Compliance Plan through developing site-specific agreements or orders or through continued oversight of existing site-specific agreements and orders

Coordination With Other Departmental Planning Efforts

The preparation and implementation of the National Compliance Plan must be integrated with other ongoing Departmental management planning efforts, such as the EM PEIS and Five-Year Plan. These management planning efforts and the manner in which they will be coordinated with the National Compliance Plan are described below.

Environmental Restoration and Waste Management Programmatic Environmental Impact Statement (EM PEIS)

The Department is preparing, pursuant to NEPA and DOE regulations, a PEIS on the potential environmental impacts associated with alternatives for environmental restoration and waste management program activities. The EM PEIS will be a key policy and strategy document to support decisions for future configurations and operation of the Department's waste management complex. The Department is endeavoring to establish an environmental restoration and waste operations program to manage its activities in a manner that addresses nationwide needs and priorities. Specific alternatives being considered address factors such as waste generation amounts and schedules; siting of facilities for treatment, storage, and disposal of waste streams; and cleanup levels and land use options.

The Department is providing two public comment periods during the preparation of the EM PEIS. The first period included 23 public scoping hearings nationwide to receive public input on the Notice of Intent for the PEIS. The Department has scheduled issuance of the ROD based on the EM PEIS for the fourth quarter of 1994.

Coordination of the EM PEIS with the National Compliance Plan has been discussed in detail earlier in Section 3 of this Strategy. In brief, the draft EM PEIS and National Compliance Plan will be developed concurrently and will be made available for public comment at the same time. The EM PEIS will include a programmatic analysis of a range of alternatives for the configuration of mixed waste TSD facilities. The National Compliance Plan will focus on analysis of TSD facility technologies and standardized facility designs. The final National Compliance Plan will contain proposed schedules for implementation of preferred alternatives, including those selected in the EM PEIS ROD, and will provide the basis for schedules proposed in the site-specific plans.

Nuclear Weapons Complex (NWC) Reconfiguration PEIS

The NWC comprises a subset of DOE's facilities that design, manufacture, test, and maintain nuclear weapons in this country's arsenal and dismantle the weapons retired from that stockpile. The NWC currently consists of 12 sites located in 11 States. In February 1991, the Department released the *Nuclear Weapons Complex Reconfiguration Study*, which proposed a reconfiguration of the NWC, designated Complex 21. The proposed Complex 21 would be smaller, less diverse, and less expensive to operate than the current Complex. Concurrent with the decision to prepare the EM PEIS, the Secretary of Energy determined that a separate PEIS would also be prepared for DOE's proposal to reconfigure the NWC. The NWC Reconfiguration PEIS will identify and analyze the direct, indirect, and cumulative effects of a range of reasonable programmatic alternatives for reconfiguration of the Complex, and compare them to the effects of not reconfiguring the Complex. The objective of the reconfiguration proposal is to safely and reliably support the nuclear deterrent objectives set by the President and funded by Congress.

The DOE decision to prepare two separate PEISs was based on the separate sets of decisions that each PEIS must address. Among other things, the Reconfiguration PEIS will help determine those sites that will carry out the nuclear weapons mission over the long term. The EM PEIS, on the other hand, is directed at alternative strategies and policies for conducting a DOE-wide EM program at both defense and non-defense facilities. The volume of waste attributable to the future operation of the Complex is a small portion of the waste to be considered in the EM PEIS.

Preparation of the three documents—the National Compliance Plan, EM PEIS, and NWC Reconfiguration PEIS—will be closely coordinated. The Reconfiguration PEIS is on approximately the same schedule as the EM PEIS, and thus, will also track development of the National Compliance Plan. In evaluating options for siting mixed waste TSD facilities and determining appropriate future technologies, both the EM PEIS and National Compliance Plan will consider information being developed for the NWC Reconfiguration PEIS, and the final National Compliance Plan will incorporate decisions made in both the EM PEIS ROD and Reconfiguration PEIS ROD.

Five-Year Plan

The Environmental Restoration and Waste Management Five-Year Plan is DOE's primary overall planning document for its nuclear facilities and sites' environmental programs, allowing the Department to look beyond the current three-year federal budget horizon. Each Five-Year Plan reports on DOE's progress in implementing its environmental mission, identifies what must be accomplished over a five-year planning period, and describes strategies for achieving critical program objectives. This plan captures the results of a comprehensive annual planning process that involves EM, various external parties, and the general public. The Five-Year Plan is updated on an annual basis and in accordance with the National Defense Authorization Act for FY 1992 and 1993.

The Five-Year Plan consolidates for planning purposes five areas of environmental compliance:

- Corrective Activities (which are necessary to bring active and standby facilities into compliance with local, State, and Federal laws);
- Environmental Restoration Activities (waste cleanup and facility D&D);
- Waste Management Activities (the treatment, storage, and disposal of waste generated as a result of ongoing activities);
- Technology Development Activities (supports the first three types of activities); and
- Transportation (of DOE materials including hazardous materials, substances, and wastes).

In the waste management arena, for example, the Five-Year Plan describes the program's overall goals and objectives, key issues, major activities and initiatives, funding estimates for the next five years, and accomplishments. These elements cover the management of sanitary, hazardous, radioactive, and mixed wastes. The Five-Year Plan also sets forth major waste management milestones for the next five years, key issues, and accomplishments on a site-specific basis for each of the DOE sites in the EM program.

The Department involves the public in the preparation of the Five-Year Plan in a variety of ways, including:

- Quarterly meetings of the State and Tribal Government Working Group to discuss, review, comment, and follow up on each Five-Year Plan;
- Annual meetings of the Stakeholders' Forum, made up of officials of education, government, business, public health associations, Indian tribes, environmental groups, technology review groups, and unions, to review and comment on a predecisional draft Five-Year Plan;
- A 60-day public review and comment period following publication of the Draft Five-Year Plan; and
- Public review and comment on each field office's Site-Specific Five-Year Plan, which is prepared in coordination with the National Five-Year Plan.

The Five-Year Plan addresses a much broader spectrum of EM environmental program activities than the National Compliance Plan, which will focus on mixed waste management. The National Compliance Plan will provide the vehicle for a more detailed examination of mixed waste issues than is possible in the Five-Year Plan, by providing the detailed data and analyses needed to support mixed waste management planning. The Five-Year Plan will summarize the progress being made on the National Compliance Plan and the proposed actions that result from this national planning process. In addition, public input on the Five-Year Plan sections that are relevant to the National Compliance Plan will be considered in development of the national plan.

Roadmaps

In 1990, the Department initiated a pilot program to develop site-specific "roadmaps" at four sites to identify the actions necessary to meet the Department's goals of cleaning up the nuclear complex and bringing its facilities into compliance with applicable laws and regulations. Roadmaps are also the basis for identifying site technology needs, human resource requirements, and other crosscutting issues. Roadmaps are developed at the site level by following a systematic planning process that largely focuses on issue identification, root-cause analysis, and issue resolution. The resulting roadmap identifies the actions to be taken and the issues to be resolved to achieve the Department's environmental mission.

Based on the success of the pilot program, in 1991, 32 additional sites were directed to prepare roadmaps. This effort, currently underway, will result in site roadmaps that address the following:

- Low-level waste/low-level mixed waste
- Hazardous/sanitary waste
- High-level waste
- Transuranic waste
- Environmental restoration

In the waste management components of the roadmaps, each site will identify its individual waste streams, the current management of the waste stream, and

the specific activities needed in the future to properly manage the waste through to final disposal (e.g., characterization, storage, treatment, transportation). The draft roadmaps prepared to date have identified numerous issues that require resolution at the national level in order for the site to proceed with its mixed waste management activities. Included among these issues is the need for a DOE complex-wide TSD strategy. The sites have recognized that it may not be appropriate for each site to develop a full suite of TSD facilities for all of their waste streams. For example, some sites may generate small quantities of a waste stream that require a specific type of treatment. It may not be cost-effective or environmentally sound to develop a treatment system on site for that stream, where that treatment could be made available at another DOE site that has larger quantities of waste that can utilize this treatment capacity. Similarly, due to certain environmental characteristics of some DOE sites (e.g., high water table), it may not be appropriate to site a disposal facility at these locations, and therefore an alternative location is likely to be required. However, the sites have recognized that it is not possible for them to make such decisions individually; a nationally coordinated waste management strategy is needed.

One purpose of developing the National Compliance Plan and EM PEIS is to provide forums for resolution of such national issues. The preferred mixed waste management strategies identified in the National Compliance Plan and EM PEIS will feed back into the site roadmaps and provide coordinated direction to mixed waste management decisions at the site level. Conversely, as the individual site roadmaps are updated each year, they will continue to identify those issues that must be addressed at the national level. The site-specific plans required by the Federal Facility Compliance Act and described in Section 3 of this Strategy represent a subset of the site roadmaps. The site-specific plans will focus on activities necessary to develop treatment and attain compliance with the RCRA LDRs. The site roadmaps will include these activities, as well as other mixed waste technical and management activities the sites will carry out that are not directly related to compliance with the LDRs. All site-specific activities will be subject to appropriate NEPA review prior to implementation.

Section 4—Conclusion

Developing a National Compliance Plan will be an important step toward promoting DOE compliance with the mixed waste requirements of the RCRA LDRs and Federal Facility Compliance Act, and ensuring sound management of a program that will entail significant federal expenditures. By developing the plan in conjunction with the EM PEIS, the cumulative environmental impacts of the Department's mixed waste management plans can be considered. Finally, it will provide a vehicle for early EPA, State, and public involvement in DOE's mixed waste management planning, for dialogue between these parties, and for enhancing understanding of the larger framework in which site-specific decisions are made.

List of Acronyms

AEA	Atomic Energy Act.
BAA	Broad Agency Announcement.
BDAT	Best Demonstrated Available Technology.
CBC	Case-by-Case (Extension).
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act.
CRADA	Cooperative Research and Development Agreement.
D&D	Decontamination and Decommissioning.
DOE	Department of Energy.
DOT	Department of Transportation.
EM	Office of Environmental Restoration and Waste Management.
EPA	Environmental Protection Agency.
LDRs	Land Disposal Restrictions.
MWIP	Mixed Waste Integrated Program.
NEPA	National Environmental Policy Act.
NRC	Nuclear Regulatory Commission.
NWC	Nuclear Weapons Complex.
PCBs	Polychlorinated Biphenyls.
PEIS	Programmatic Environmental Impact Statement.
PURDA	Program Research and Development Acquisition.
R&D	Research and Development.
RCRA	Resource Conservation and Recovery Act.
ROD	Record of Decision.
SBIR	Small Business Innovative Research.
TSCA	Toxic Substances Control Act.
TSD	Treatment, Storage, and Disposal.

List of Acronyms for Attachment A

AMES	AMES Laboratory.
ANLE	Argonne National Laboratory—East.
ANLW	Argonne National Laboratory—West.
BAPL	Bettis Atomic Power Laboratory.
BCL	Battelle Columbus Laboratory
BNL	Brookhaven National Laboratory.
CISS	Colonie Interim Storage Site.
FMPC	Feed Materials Production Center.
FNAL	Fermi National Accelerator Laboratory.
GJPO	Grand Junction Projects Office.
HANF	Hanford.
INEL	Idaho National Engineering Laboratory.
ITRI	Inhalation Toxicology Research Institute.
K25	Oak Ridge K25 Site.
KAPL	Knolls Atomic Power Laboratory—Knolls.
KCP	Kansas City Plant.
KESS	Knolls Atomic Power Laboratory—Kesserling.
LANL	Los Alamos National Laboratory.
LBL	Lawrence Berkeley Laboratory
LEHR	Laboratory for Energy-Related Health Research.
LLNL	Lawrence Livermore National Laboratory.
MND	Mound Plant.
NRF	Naval Reactor Facilities.
NTS	Nevada Test Site.
ORNL	Oak Ridge National Laboratory
PGDP	Paducah Gaseous Diffusion Plant.
PORTS	Portsmouth Gaseous Diffusion Plant.
PPPL	Princeton Plasma Physics Laboratory.
PTX	Pantex Plant.
RF	Rocky Flats Office.
RFP	Rocky Flats Plant.
SNLA	Sandia National Laboratories—Albuquerque.
SNLL	Sandia National Laboratories—Livermore.
SRS	Savannah River Site.
SSFL	Santa Susana Field Laboratory (ETEC).
WVDP	West Valley Demonstration Project.
WELD	Weldon Springs Remedial Action Project.
Y12	Oak Ridge Y12 Plant.

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING THERMAL AND STABILIZATION TREATMENT

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
ANLE	SCINTILLATION VIALS	ST	NO	0.000	5.040
ANLE	CONTAMINATED ANIMAL PARTS	T	NO	0.000	3.790
ANLE	RADIOACTIVE FLAMMABLE WASTE	ST	YES	0.105	0.310
ANLW	ETHANOL-VERMICULITE-SPILLIGNITABLE SOLN	T	NO	0.000	0.420
ANLW	SOLVENT DECON SOLUTION (NON-HALOGENATED)	S	NO	0.000	0.020
BAPL	M-192 SOLVENT	ST	YES	0.020	0.230
BAPL	EAST BARRIER DOOR WELL OIL	T	NO	0.000	0.400
BAPL	SUMP #6 OIL	T	NO	0.000	1.800
BAPL	INACTIVE WASTE ISOLATION PIT OIL	T	NO	0.000	0.100
BNL	SCINTILLATION FLUID TRICHLOROETHANE	S	YES	4.250	12.500
BNL	CHLORINATED SOLVENTS	ST	YES	0.800	0.430
BNL	IGNITABLE LIQUID	SCT	YES	0.100	0.300
BNL	SCINTILLATION FLUID	T	YES	3.000	1.700
BTCO	SUMP SLUDGE (LLW,FBC>500 PPM, RCRA)	C	NO	0.000	1.560
BTCO	SUMP SLUDGE (LLW WITH RCRA)	NA	NO	0.000	1.240
BTCO	LOW-LEVEL SUMP SLUDGE WITH PCB'S AND TCE	S	NO	0.000	3.840
BTCO	SUMP SLUDGE (LLW, RCRA, DL<PCB<50PPM)	NA	NO	0.000	1.590
CISS	WASTE OIL (DC11)	T	NO	0.000	0.210

S=Solvent; C=California list; T=Thirds; NA=Not Appplicable

ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING THERMAL AND STABILIZATION TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
CISS	D039, D040 (#349, 377)	NA	NO	0.000	0.420
CISS	HYDROSEAL AND DYE D039 (#455, #330)	NA	NO	0.000	0.420
CISS	WASTE OIL (D006)	T	NO	0.000	0.420
CISS	OIL D039	NA	NO	0.000	3.150
CISS	WASTE OIL (D039, PCB'S)	NA	NO	0.000	0.210
CISS	WASTE OIL (D002)	T	NO	0.000	0.420
CISS	WASTE OIL (D008)	T	NO	0.000	0.210
CISS	ACIDIC WASTE (D001, D002, D008)	CT	NO	0.000	0.210
CISS	LIQUID WASTE-IGNITABLE D001, D023 #510	T	NO	0.000	0.150
CISS	LIQUID WASTE-IGNITABLE D001, D039 #350	T	NO	0.000	0.210
CISS	SPENT SOLVENTS F001, #460	S	NO	0.000	0.020
CISS	WASTE OIL (D001, EP TOX)	T	NO	0.000	0.210
CISS	WASTE OIL (D001)	T	NO	0.000	0.210
CISS	SUMP WASTE (D001)	T	NO	0.000	0.830
FERM	SPENT ETHYL ALCOHOL	T	YES	0.080	0.004
FMPC	USED OIL (D005, D008)	T	NO	0.000	2.290
FMPC	WASTE SOLVENTS, MIXED	ST	NO	0.000	6.380
FMPC	TANK 5 CLEANOUT	S	NO	0.000	2.000

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING THERMAL AND STABILIZATION TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
FMPC	SPENT 1,1,1-TRICHLOROETHANE 2	S	NO	0.000	0.300
FMPC	WATER/GAS MIXTURE (D008, D018)	T	NO	0.000	2.250
FMPC	SPENT TETRACHLOROETHYLENE	ST	NO	0.000	0.003
FMPC	LIQUID AND SOLID SAMPLES	ST	NO	0.000	0.060
FMPC	OIL AND SOLVENTS	ST	NO	0.000	0.050
FMPC	CONTAMINATED SOLVENT	S	NO	0.000	0.130
FMPC	SPENT XYLENE	ST	NO	0.000	0.020
FMPC	SPENT METHYLENE CHLORIDE AND PERC	S	NO	0.000	0.300
FMPC	USED OIL (F002)	S	YES	30.000	3.650
FMPC	1,1,1-TRICHLOROETHANE STILL BOTTOMS	ST	NO	0.000	13.450
FMPC	PAINT THINNERS (F002,3,5,D001)	ST	NO	0.000	1.140
FMPC	USED OIL (F002, D008, D018)	ST	NO	0.000	0.910
FMPC	KEROSENE	NA	YES		1.900
FMPC	SPENT 1,1,1-TRICHLOROETHANE	ST	YES	10.000	0.092
FMPC	CONTAMINATED SPENT SOLVENT (F001,2,D018)	S	NO	0.000	1.700
FMPC	USED OIL 1	ST	YES	14.000	3.700
FMPC	USED OIL 2	ST	YES	18.000	17.900
FMPC	USED OIL (F001, 3, D008, 18)	ST	NO	0.000	1.060

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING THERMAL AND STABILIZATION TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
FMPC	USED OIL (F002, D005,8,18)	ST	NO	0.000	0.340
FMPC	SPENT ACETONE	ST	NO	0.000	0.500
FMPC	PAINT THINNER (D001,F002)	ST	YES	3.000	13.280
FMPC	OILY SLUDGE 3	ST	YES	16.000	1.900
FMPC	ACETONITRILE IN WATER	T	NO	0.000	0.096
FMPC	WASTE ETHYL ETHER	ST	NO	0 000	0.080
FMPC	WASTE BENZENE	T	NO	0.000	0.204
FMPC	USED OIL 3	ST	YES	15 000	14.400
FMPC	LIME SCALE AND SEMISOLID	S	NO	0 000	1.700
FMPC	LEADED GASOLINE	T	NO	0 000	3.700
FMPC	SPENT TBP/KEROSENE	CT	YES	3.000	3.000
FMPC	GASOLINE	T	NO	0.000	0.267
FMPC	BARIUM SULFATE FILTER CAKE	T	NO	0 000	9.000
FMPC	PAINT THINNER (D001)	T	NO	0 000	0.400
FMPC	DISCARD PROCESS RESIDUES	S	NO	0 000	0.600
FMPC	WATER/GAS MIXTURE (D001,D018)	T	NO	0.000	7.270
FMPC	OILY SLUDGE (D005,D008)	T	YES	3.000	3.000
FMPC	AEROSOL PAINT CANS, NON-EMPTY	T	YES	0 000	

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING THERMAL AND STABILIZATION TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
FMPC	SPILL TETRACHLOROETHYLENE	T	NO	0.000	0.310
FMPC	SPENT METHANOL	ST	NO	0.000	0.210
FMPC	SPENT ENAMEL	T	YES	1.000	1.000
FMPC	WATER/GAS MIXTURE (D001,D018,D008)	T	NO	0.000	3.700
GJPO	LIQUID SCINTILLATION COCKTAILS	CT	YES	0.020	0.007
GJPO	RESIDUES FROM PCB/PESTICIDES EXTRAC	S	YES	0.020	0.033
HANF	SOLVENT/TC METAL SOILS (Hg)	ST	YES	0.060	0.210
HANF	ORGANIC RMW PCB LIQUIDS >500 PPM (CA)	CT	YES	6.210	21.750
HANF	TC METAL INORGANIC SOLID DEBRIS (Hg,PCB)	T	YES	2.750	9.610
HANF	IGNITABLE LIQUIDS - TOC > 10%	T	YES	0.120	0.420
HANF	SOLVENT SOILS	S	YES	4.200	14.700
HANF	SOLVENT SOILS (CA)	SC	YES	0.060	0.210
HANF	HEXONE	ST	NO	0.000	136.000
HANF	SOLVENT/TC METAL SLUDGES/DRY PART. (Hg)	ST	YES	0.060	0.210
HANF	APPENDIX IV LABPACKS (CA,Hg)	CT	YES	0.190	0.680
HANF	SOLVENT APPENDIX V LABPACKS (CA,Q)	SCT	YES	0.060	0.210
HANF	APPENDIX V LABPACKS	T	YES	1.140	4.000
HANF	SOLVENT APPENDIX IV LABPACKS (CA)	SCT	YES	10 010	35.050

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING THERMAL AND STABILIZATION TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
HANF	NON-TC MET/SOLV ORG SOLID DEBRIS (CA,LO)	CT	YES	0.180	0.630
HANF	APPENDIX IV LABPACKS (CA)	CT	YES	3.250	11.370
HANF	APPENDIX IV LABPACKS (CA,PCB)	CT	YES	0.060	0.210
HANF	ORGANIC RMW PCB LIQUIDS 50-500 PPM (CA)	CT	YES	3.240	11.340
HANF	APPENDIX IV LABPACKS	T	YES	0.240	0.840
HANF	SOLVENT APPENDIX V LABPACKS (CA)	SCT	YES	1.380	4.830
HANF	SOLVENT APPENDIX V LABPACKS	ST	YES	3.670	12.830
HANF	SOLVENT SLUDGES/DRY PARTICULATE	S	YES	0.060	0.210
HANF	SOLVENT SLUDGES/DRY PARTICULATE (CA)	SC	YES	0.550	1.920
HANF	SOLVENT/TC METAL SLUDGES/DRY PART. (CA)	SCT	YES	0 010	0.030
HANF	SOLVENT APPENDIX IV LABPACKS	ST	YES	0 310	1.080
INEL	TCA WASTE	S	YES	0.200	0 400
INEL	CHROMIUM TRIOXIDE WASTES	T	YES	0 020	0.012
INEL	UNCEMENTED SLUDGES (LLW)	SCT	NO	0 000	2429 000
INEL	TAN 629 TANK BOTTOMS SLUDGE	T	NO	0 000	0.020
INEL	PARTICULATE WASTES (LLW)	ST	NO	0 000	1001.000
INEL	CEMENTED LLW SLUDGES	ST	NO	0 000	286.000
INEL	SPENT 1,1,1-TCE DEGREASER SOLVENT	S	YES	0.400	1.000

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING THERMAL AND STABILIZATION TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
INEL	ARA IV SUMP SLUDGE	S	NO	0.000	0.640
INEL	TAN DECON SOLVENTS WASTES	ST	NO	0.000	5.700
INEL	MISCELLANEOUS LAB WASTES	T	YES	0.020	0.200
INEL	NON-ACID LIQUID MIXED WITH 1,1,1 TCA	ST	NO	0.000	0.830
INEL	TCA WASTE WITH WATER	S	NO	0 000	0.400
INEL	TRA ORGANIC LAB WASTES	ST	YES	0.020	0.020
INEL	SPENT GM 141 SAPC SOLVENT	T	YES	2.000	0.880
INEL	TURCO DECON SOLUTION (UNUSED)	NA	NO	0.000	0.110
INEL	SPENT STODDARD SOLVENT	T	YES	0.220	0.220
INEL	ORGANIC LAB WASTES	ST	YES	0.020	0.020
INEL	1,1,1-TCE AND ALCOHOL LAB WASTE	ST	YES	0.200	0 400
INEL	HEAVY METAL, RADIOACTIVE OIL	T	YES	0 400	1.050
INEL	TRA LAB SCINTILLATION COCKTAILS	T	NO	0 000	0.210
INEL	LOW LEVEL LAB WASTE (ALPHA CONTAMINATED)	CT	YES	0.210	0 420
INEL	TAN TCLP SLUDGE (TCE,PCE)	NA	NO	0 000	3.120
ITRI	RADIOACTIVE TOXICS WASTE	T	NO	0 000	0 900
ITRI	ACTINIDE LIQUID SCINTILLATION VIALS LSC	SCT	YES	1.000	0.200
K25	SPENT SOLVENTS AND WASTE OILS	ST	YES	200 000	1096.000

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING THERMAL AND STABILIZATION TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
K25	PAINT WASTE AND ORGANIC SLUDGES	SCT	YES	7.000	29.000
K25	WASTEWATER TREAT. SLUDGES & SPENT CARBON	ST	YES	242.000	715.000
K25	SPENT SOLVENTS AND SLUDGES	SCT	YES	21.000	32.000
K25	PCB CONTAMINATED SOILS WITH MERCURY	T	NO	0.000	20.040
K25	LABORATORY BMP ORGANIC WASTE	SCT	YES	7.000	20.000
KCP	PHASE 2 - D/20 WASTE	S	NO	0.000	2.079
LANL	SCINTILLATION VIALS AND FLUIDS	S	YES	5.000	44.950
LANL	MERCURY CONTAMINATED PUMP OIL	SCT	YES	0.420	3.960
LANL	LAB CHEMICALS IN LAB PACKS	T	YES	2.000	6.250
LANL	CHEMSTRIP PAINT REMOVER	S	YES	1.700	9.800
LANL	TA-50 TREATMENT PLANT SLUDGE	S	YES	50.000	153.790
LBL	FLAMMABLE LIQUIDS	ST	YES	0.500	0.200
LBL	SCINTILLATION LIQUID	ST	NO	0.000	3.800
LBL	LAB PACKED CHEMICALS	SCT	YES	0.200	0.600
LBL	SCINTILLATION FLUID (U239,U220)	T	YES	0.200	4.000
LEHR	LEHR FLAM MW-1	ST	NO	0.000	
LLNL	SOLIDIFIED ORGANICS	ST	NO	0.000	43.000
LLNL	LABORATORY WASTE SOLUTION	SCT	YES	7.000	4.380

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING THERMAL AND STABILIZATION TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
LLNL	SCINTILLATION VIALS	ST	YES	1.000	
LLNL	SOLVENT LIQUID WASTE	S	YES	5.000	6.100
LLNL	D-38 CHIPS/SLUDGE	ST	YES	2.000	
LLNL	DORR OLIVER FILTRATION WASTES	ST	YES	5.000	26.000
MND	ETHYLENE DICHLORIDE - LLW	T	NO	0.000	
MND	SCINTILLATION COCKTAIL	S	YES	0.640	39.700
NTS	SOILS CONTAMINATED W/RADIATION & SOLVENT	S	YES	18.120	0.000
NTS	WATER CONTAMINATED W/RADIATION & SOLVENT	S	YES	18.120	0.000
ORNL	BENZENE	T	YES	0.010	0.220
ORNL	FLAMMABLE LIQUIDS	T	YES	7.280	45.810
ORNL	PHENOL	T	YES	0.020	0.020
ORNL	7,12-DIMETHYLBENZANTHRACENE	T	YES	0.005	0.001
ORNL	METHANOL (METHYL ALCOHOL)	T	YES	0.080	0.001
ORNL	SCINTILLATION FLUIDS (SPENT SOLVENTS)	S	YES	4.400	2.390
ORNL	SPENT SOLVENTS WITH SCINTILLATION FLUIDS	S	YES	1.260	0.790
PGDP	PCB/HEXANE SAMPLES MIXED	CT	YES	0.420	
PGDP	TEHF SOLUTION	T	YES	0.300	0.850
PGDP	URANIUM CONTAM. WASTE OILS MIXED EP TOX	T	YES	22.100	

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING THERMAL AND STABILIZATION TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
PGDP	PCB/CHLORINATED SOLVENTS	S	NO	0.000	28.350
PGDP	SPENT SOLVENTS II	S	YES	2.720	67.190
PGDP	GARAGE WASH PIT SLUDGE-EP TOXIC MIXED	ST	YES	0.630	0.620
PGDP	LABORATORY SAMPLES	T	YES	0.200	0.200
PGDP	MINERAL SPIRITS	T	NO	0.000	0.210
PGDP	SPENT SOLVENTS (XYLENE/CARBITOL)	ST	YES	0.120	0.650
PGDP	AQUEOUS CLEANER MIXED EP TOXIC	CT	YES	0.210	
PGDP	SPENT SOLVENTS I	ST	NO	0.000	0.210
PORT	LABORATORY ACID PIT	ST	YES	0.730	7.280
PORT	DEGREASING AGENTS	S	YES	1.900	6.400
PORT	EXCESS LABORATORY SAMPLES	ST	YES	0.900	2.700
PORT	PAINT MATERIALS	T	YES	0.500	0.600
PORT	X-701B REMEDIATION	S	NO	0.000	3534.000
PORT	SPILL IN URANIUM RECOVERY	T	NO	0.000	0.800
PORT	MOTOR CLEANING	T	YES	16.000	8.000
PORT	OIL/SOLVENT MIXTURE	S	YES	4.000	10.500
PORT	URANIUM ANALYZER SOLUTION	T	YES	6.000	8.400
PORT	REMEDIAL FACILITY INVESTIGATION-SOLIDS	S	YES	10.000	30.000

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING THERMAL AND STABILIZATION TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
PORT	MACHINE COOLANT	CT	YES	1.300	15.500
PPPL	TOLUENE AND XYLENE BASED COCKTAILS	S	YES	0.020	0.020
PTX	SCINTILLATION FLUIDS	S	YES	3.000	0.690
PTX	SCINTILLATION FLUIDS USING BIOFLUOR	T	NO	0.000	3.740
PTX	SCINTILLATION FLUIDS USING INSTA-GEL	S	NO	0.000	0.210
RFP	MISCELLANEOUS SOLID WASTES/LLW MIXED	S	YES	1.500	29.100
RFP	PARTICULATE-SLUDGE/LLW MIXED (2)	ST	YES	1.500	3.440
RFP	PCB (SOLIDS)/LLW MIXED	SC	NO	0.000	9.990
RFP	SOLIDIFIED BYPASS SLUDGE/LLW MIXED	ST	YES	44.000	440.700
RFP	SOIL & CLEANUP DEBRIS/LLW MIXED	S	YES	3.000	9.200
RFP	ROASTER OXIDE/LLW MIXED	S	NO	0.000	82.020
RFP	CEMENTED COMPOSITE CHIPS/LLW MIXED	S	YES	12.000	90.200
RFP	CUTOFF SLUDGE/LLW MIXED	S	NO	0.000	7.600
RFP	PAINTS & CYANIDES/LLW MIXED	CT	YES	0.000	0.630
RFP	FBI OIL	SCT	YES	0.000	109.700
RFP	ORGANICS-DISCARD LEVEL/LLW MIXED	S	NO	0.000	8.300
RFP	LAB SOLUTIONS/LLW MIXED	SCT	NO	0.000	0.210
RFP	MISCELLANEOUS LIQUIDS/LLW MIXED	SCT	NO	0.000	47.000

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING THERMAL AND STABILIZATION TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
RFP	SPENT ABSORBENT/LLW (OIL DRI)	S	YES	0.000	0.210
RFP	PCB (LIQUID)/LLW MIXED	SC	NO	0.000	0.630
RFP	ABSORBED ORGANIC WASTE/LLW MIXED	T	NO	0.000	0.840
SNLA	HOT CELL FACILITY OPERATION ALPHA	ST	YES	1.000	1.000
SNLL	SCINTILLATION COCKTAIL V'ITH TRITIUM	ST	YES	0.320	0.630
SRS	RADIOACTIVE FREON-113	S	NO	0.000	0.840
SRS	RADIOACTIVE TRICHLOROETHANE	S	YES	0.020	0.200
SRS	DWPF BENZENE	T	YES	189.000	0.000
SRS	SCINTILLATION SOLUTION	ST	YES	1.500	4.500
SRS	SPENT METHANOL SOLUTION	T	NO	0.000	0.140
WELD	D040 - CONTAMINATED RAINWATER	NA	NO	0.000	2.290
WELD	D001	T	NO	0.000	7.911
WELD	U228	T	NO	0.000	0.416
WELD	D009-TBP	CT	NO	0.000	28.000
WVDP	ACETONE	T	YES	0.004	0.004
WVDP	SITE DECONTAMINATION SOLUTIONS	T	NO	0.000	0.056
WVDP	METHANOL	T	NO	0.000	0.001
WVDP	OILS (LEAD CONTAINING)	T	NO	0.000	0.010

S=Solvent; C=California list; T=Thirds; NA=Not Appplicable

ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING THERMAL AND STABILIZATION TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
WVDP	CONTAMINATED ACETONE	SOT	NO	0.000	0.069
WVDP	FUEL & OIL	T	NO	0.000	0.146
WVDP	DECON SOLUTION (METHYLENE CHLORIDE)	T	NO	0.000	0.003
WVDP	UNKNOWN HIGH TOC ORGANIC LIQUIDS	T	NO	0.000	0.0192
WVDP	PU SCINTILLATION	ST	NO	0.000	0.003
Y12	SPENT SOLVENT	S	YES	100.000	203.500
Y12	MIXED WASTE SOILS (OIL LAND FARM)	S	NO	0.000	284.000
Y12	MERCURY CONTAMINATED WASTE	T	YES	20.000	57.200
Y12	MIXED WASTE SOIL (OIL PCND OR DARA SOIL)	S	NO	0.000	3134.000
Y12	WASTE SOIL FROM CLOSURE (DRUM STOR AREA)	S	NO	0.000	500.000
Y12	PCB CONTAINING SPENT SOLVENT	ST	YES	100.000	284.000
	TOTALS			1315.764	15553.657

S=Solvent; C=California list; T=Thirds; NA=Not Appplicable

ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING STABILIZATION TREATMENT

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
ANLE	EVAPORATOR/CONCENTRATION BOTTOM WASTE	T	YES	2.640	52.000
ANLW	ELECTROREFINER STRIPPED SALT - BA & CD	T	YES	0.110	0.000
BAPL	LEAD BASE PAINT CHIPS	T	NO	0.000	0.050
CISS	ELECTROPLATING WASTE (F006, F009)	T	NO	0.000	0.620
CISS	ACIDIC WASTE (D002, TCLP)	T	NO	0.000	0.210
CISS	ELECTROPLATING WASTE (F006, F008)	T	NO	0.000	7.060
CISS	ELECTROPLATING WASTE (F006)	T	NO	0.000	2.080
CISS	CORROSIVE ACID	CT	NO	0.000	0.210
CISS	UNKNOWN SLUDGE	T	NO	0.000	0.020
CISS	ELECTROPLATING WASTE (F009)	T	NO	0.000	5.830
CISS	UNKNOWN LIQUID (D008)	T	NO	0.000	0.210
CISS	D007, D040 #445	T	NO	0.000	0.020
CISS	SUMP WASTE - LIQUID	T	NO	0.000	0.210
CISS	UNKNOWN LIQUID (D009)	T	NO	0.000	0.210
CISS	LAB WASTE	T	NO	0.000	0.210
CISS	SUMP WASTE - SOLID	T	NO	0.000	0.210
CISS	ELECTROPLATING WASTE (F007)	T	NO	0.000	1.460
FMPC	SPENT CHROMIC ACID	CT	NO	0.000	1.000

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING STABILIZATION TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
FMPC	INCINERATOR CINDERS	T	NO	0.000	2.000
FMPC	LAB-PACKED WATER AND SAMPLES	T	NO	0.000	0.070
FMPC	BARIUM CHLORIDE CHROME RESIDUE	T	NO	0.000	16.000
FMPC	CONTAMINATED ALUMINA-SODA LIME	T	NO	0.000	11.000
FMPC	IMPURE THORIUM NITRATE	T	NO	0.000	4.000
FMPC	SCRAP U3O8 II	T	YES	16.000	16.000
FMPC	WET SUMP CAKE (D004,6,8)	T	YES	16.000	16.000
FMPC	BARIUM CHLORIDE SALT	T	YES	53.000	53.000
FMPC	DRUM DECONTAMINATION RESIDUES	T	YES	5.000	5.000
FMPC	DUST COLLECTOR RESIDUES (D008)	T	YES	1.000	1.000
FMPC	FURNACE SALT I	T	YES	9.000	9.000
FMPC	FURNACE SALT (D004; D006, D008; D010))	T	YES	346.000	346.000
FMPC	SAND BLAST PAINT RESIDUES	T	YES	112.000	112.000
FMPC	SCRAP U308 (DUST COLLECTOR)	T	YES	16.000	16.000
FMPC	WET SUMP CAKE (D002, D006, D010)	T	NO	0.000	940.000
FMPC	SAMPLES, NON-METALLIC, MISC. LIQUID	T	NO	0.000	0.350
FMPC	U-CONTAMINATED WATER	T	NO	0.000	2.900
FMPC	U308 FOR OXIDATION	T	NO	0.000	9.130

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING STABILIZATION TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
FMPC	THORIUM NITRATE SOLUTION	T	NO	0.000	4.000
FMPC	TANK 8 CLEANOUT RESIDUES	T	NO	0.000	8.000
FMPC	SUMP CAKE WITH FREE LIQUIDS	T	NO	0.000	12.000
FMPC	CONTAMINATED SOIL AND ROCKS	T	NO	0.000	3.300
FMPC	SAMPLES, NON-METALLIC, MISC. - SOLIDS	T	NO	0.000	0.065
FMPC	DUST COLLECTOR RESIDUES (D006)	T	NO	0.000	7.530
HANF	183-H SOLAR BASIN WASTE, TYPE 3	T	NO	0.000	666.600
HANF	TC METAL SLUDGES/DRY PARTICULATE (Hg)	T	YES	4.430	15.510
HANF	MERCURY SLUDGES/DRY PART. (Hg>260mg/kg)	T	YES	0.010	0.020
HANF	TC METAL SLUDGES/DRY PARTICULATE (As)	T	YES	0.070	0.260
HANF	TC METAL SLUDGES/DRY PARTICULATE	T	YES	0.230	0.800
HANF	183-H SOLAR BASIN WASTE, TYPE 1	CT	NO	0.000	543.700
HANF	NON-TC METAL/SOLVENT SLUDGES/DRY PART.	T	YES	1.990	6.980
HANF	TC METAL SLUDGES/DRY PARTICULATE (CA,Hg)	CT	YES	0.060	0.210
HANF	NON-TC METAL/SOLVENT SOIL	T	YES	0.090	0.330
HANF	TC METAL SOIL	T	YES	0.090	0.330
HANF	183-H SOLAR BASIN WASTE, TYPE 2	CT	NO	0.000	570.700
INEL	ISV WASTEWATER	T	NO	0.000	1.450

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING STABILIZATION TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
INEL	HEAVY METAL LIQUID LAB WASTES	CT	YES	0.020	
INEL	HTRE-3 CONTAMINATED CONCRETE WASTE	T	NO	0.000	5.600
INEL	SOLIDIFIED WERF ASH	T	NO	0.000	0.830
INEL	ABSORBED LLW LIQUIDS	T	NO	0.000	318.000
INEL	TAN/IET HOT WASTE SLUDGE	T	NO	0.000	2.300
INEL	NONACIDIC WASTE SOLID	T	YES	4.000	1.980
INEL	TAN DECON HEAVY METAL SOLIDS AND DEBRIS	T	NO	0.000	0.320
K25	TSCA INCINERATOR ASH	T	YES	4.000	69.600
K25	TSCA INCINERATOR SUMP/IWS SLUDGES	CT	YES	22.600	85.000
K25	LABORATORY BMP ACID WASTE	CT	YES	22.000	90.000
K25	LABORATORY BMP BASE WASTE	CT	YES	4.000	22.000
K25	K-1407 B & C POND SLUDGES	T	NO	0.000	30227.000
K25	MERCURY CONTAMINATED SOIL	T	NO	0.000	230.000
K25	LAUNDRY SLUDGE	CT	YES	2.200	36.400
LANL	ACID WASTES	CT	YES	1.000	6.880
LANL	CADMIUM CONTAMINATED SLUDGE	T	NO	0.000	0.420
LBL	CORROSIVE LIQUID (BASES)	T	YES	0.020	0.200
NRF	MERCURY CONTAMINATED CLEANUP DEBRIS	CT	NO	0.000	0.020

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING STABILIZATION TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
NTS	RAD & RCRA CONTAM RE-ENTRY MINING WASTE	T	YES	4.530	0.000
ORNL	LLLW COLLECTION TANKS SLUDGE	CT	YES	0.000	
ORNL	CORROSIVES - SOLIDS (BASES)	T	YES	0.010	0.004
ORNL	INACTIVE WASTE STORAGE TANK CONTENTS-C	T	NO	0.000	0.060
ORNL	CORROSIVES - LIQUIDS (BASES)	T	YES	0.200	0.297
ORNL	BARIUM	T	YES	0.010	0.110
ORNL	CADMIUM	T	YES	0.300	0.208
PGDP	OXALIC ACID	T	NO	0.000	
PGDP	MIXED CORROSIVE WASTE - SLUDGE	CT	YES	1.500	
PGDP	EP TOXIC SLUDGES (GOLD DISSOLVER & U.P.)	T	YES	1.100	3.600
PGDP	SODIUM HYDROXIDE	T	NO	0.000	0.200
PGDP	ASH RECEIVER RESIDUE	T	NO	0.000	464.100
PGDP	HOT WATER RINSE TANK SLUDGE	CT	NO	0.000	1.700
PGDP	MAGNESIUM FLUORIDE PELLETS	T	YES	0.800	1.900
PGDP	VACUUM DUST	T	YES	0.200	
PGDP	SODIUM DICHROMATE	T	NO	0.000	0.200
PORT	SPENT NICKEL PLATING SOLUTION	CT	NO	0.000	0.200
PORT	CYANIDE SOLUTION	CT	YES	0.300	1.710

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING STABILIZATION TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
PORT	HEAVY METAL SLUDGE	T	YES	25.000	127.800
PORT	COOLING TOWER BLOW DOWN SPILL	T	YES	0.000	8.000
PORT	CLEANING SOLUTIONS	T	NO	0.000	6.000
PORT	LEAD ACID BATTERY SPILL	CT	NO	0.000	0.200
PORT	MICROFILTRATION SLUDGE	CT	YES	20.000	49.960
PORT	CHROMIC CLEANING SOLUTION	CT	NO	0.000	36.000
RFP	ACID/LLW MIXED	CT	YES	0.500	9.600
RFP	ELECTROCHEMICAL MILLING SLUDGE	CT	NO	0.000	1.500
RFP	SALTCRETE	T	YES	250.000	2200.000
RFP	PONDCRETE	T	YES	9500.000	5000.000
RFP	FLUIDIZED BED INCINERATOR ASH (LLW)	T	NO	0.000	9.000
SNLL	METALS WITH TRITIUM & URANIUM	T	YES	0.003	0.220
SRS	PLATING LINE SUMP MATERIAL	T	NO	0.000	0.200
SRS	M-AREA PLATING LINE WASTE SLURRY (TANK7)	CT	NO	0.000	1784.000
SRS	WASTE SITES/SPILL SITE SOIL	T	NO	0.000	16.000
SRS	M-AREA SLUDGE TREATABILITY SAMPLES -F006	T	YES	0.200	0.000
SRS	MARK 15 FILTER CAKE - F006	T	NO	0.000	15.400
SRS	PLATING LINE SLURRY	T	YES	189.000	2884.000

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING STABILIZATION TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
SSFL	CR & N: ELECTROPOLISH SOLUTION	CT	NO	0.000	0.106
WELD	D006	T	YES	0.000	0.208
WELD	D005	T	NO	0.000	9.992
WELD	D007	T	NO	0.000	2.500
WELD	D018	CT	NO	0.000	1.249
WVDP	ZINC BROMIDE	T	NO	0.000	1.457
WVDP	PYRIDINE/CYANIDE STANDARD	CT	NO	0.000	0.021
Y12	CADMIUM CONTAMINATED SOIL	T	NO	0.000	153.000
Y12	WASTE WATER TREATMENT SPENT CARBON	T	YES	217.000	150.000
Y12	WASTE WATER TREATMENT METAL SLUDGES	T	YES	512.000	5618.300
Y12	CHROMIUM CONTAMINATED WASTES	CT	NO	0.000	2.900
Y12	LEAD CONTAMINATED WASTE	T	YES	1.000	2.000
	TOTALS			11367.213	53133.298

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING LEAD TREATMENT

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
ANLE	SOLID (MIXED) WASTE	T	YES	0.560	4.280
ANLW	IFR EXPERIMENT LEAD WASTE	T	YES	0.072	0.575
BAPL	LEAD SEALS FROM CAST IRON PIPES	T	YES	0.050	0.210
HANF	RADIOACTIVE LEAD SOLIDS	T	YES	33.130	115.950
HANF	PUREX CANYON LEAD WASTE	T	YES	0.080	0.508
HANF	LEAD ACID BATTERIES	T	YES	0.180	0.630
HANF	SOLVENT RADIOACTIVE LEAD SOLIDS	ST	YES	0.060	0.210
INEL	RADIOACTIVE CONTAMINATED LEAD	T	YES	27.100	27.100
INEL	LEAD ACID BATTERIES, RADIOACTIVE	CT	YES	0.330	0.210
INEL	RADIOACTIVELY CONTAMINATED LEAD	T	YES	9.570	229.900
KAPL	LEAD SOLIDS	T	YES	0.080	0.000
KCP	EQUIPMENT SOURCES IN LEAD PIGS	T	YES	0.300	0.453
KESS	LEAD SOLIDS	T	YES	0.300	0.000
LANL	LEAD BRICKS, PIGS	T	YES	12.000	61.720
LBL	INDUCED LEAD	T	YES	0 020	0.100
LBL	RADIOACTIVELY CONTAMINATED LEAD	T	YES	0.020	0.100
MND	LEAD - LLW	T	YES	0.200	4 400
NTS	RADIOACTIVE CONTAMINATED LEAD	T	YES	7.930	0 000

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING LEAD TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
ORNL	LEAD	T	YES	0.480	0.492
PGDP	MISCELLANEOUS LEAD SOLIDS	T	YES	0.200	0.623
RFP	GLOVEBOX PARTS WITH LEAD/LLW MIXED	T	YES	0.460	0.210
RFP	LEAD/LLW MIXED	T	YES	7.300	28.800
RFP	HEAVY METAL (NON-SS)/LLW MIXED	T	YES	0.400	2.050
SNLA	LEAD BRICKS, PIGS, OR SHEETS	T	YES	7.000	1.800
SRS	LLW LEAD	T	YES	6.000	293.000
SSFL	LEAD - LLW	T	YES	0.000	3.500
WVDP	LEAD	T	NO	0.000	2.910
ANLW	LEAD	T	NO	0.000	0.870
BAPL	TRANSFER AND SHIPPING CASKS	T	NO	0.000	2.700
BAPL	X-RAY CELL SHIELDING	T	NO	0.000	0.060
BAPL	PIPE JOINT FITTINGS WITH LEAD INSERTS	T	NO	0.000	0.210
BAPL	LEAD SPRINKLER FUSES	T	NO	0.000	0.001
BAPL	LEAD FLOOR ANCHORS	T	NO	0.000	0.014
BAPL	MISC. LEAD BEARING MEL WASTE	T	NO	0.000	0.100
K25	Y-12 RADIOGENIC LEAD WASTE	T	NO	0.000	5.000
LANL	LEAD STRINGER	T	NO	0.000	0.714

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING LEAD TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
NRF	LEAD ASH	T	NO	0.000	0.040
SSFL	LEAD & ASBESTOS (LLW)	T	NO	0.000	0.019
WELD	D008	T	NO	0.000	1.249
AMES	CONTAMINATED LEAD	T	YES	0 001	0.100
	TOTALS			113.823	790.808

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING DEACTIVATION

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
ANLW	SODIUM - LLW	T	YES	0.230	3.810
ANLW	SODIUM POTASSIUM	T	YES	0.036	0.190
ANLW	SODIUM (CONTAMINATED) TIN BISMUTH ALLOY	T	YES	0.170	1.990
HANF	ALKALI METAL WASTE (LSA)	T	YES	0.210	13.000
INEL	ALUMINUM FINES WITH SODIUM HYDROXIDE	T	NO	0.000	0.000
ORNL	REACTIVES	T	YES	0.020	0.000
SNLA	EQUIP/THERM BATTERY ACCEL. ACT./U-CONT.	T	YES	5.000	0.300
Y12	SODIUM-POTASSIUM (NAK) WASTE	T	YES	0.020	
LANL	SODIUM	T	NO	0.000	0.110
SSFL	SODIUM	T	NO	0.000	0.010
INEL	ALUMINUM SLUDGE MIXED W/VERMICULITE	T	NO	0.000	4.400
INEL	S1G SODIUM	T	NO	0.000	0.250
INEL	EBR I NAK	T	NO	0.000	0.680
INEL	ALUMINUM FINES MIXED W/DIATOMITE	T	NO	0.000	2.500
	TOTALS			5.686	27.240

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING AMALGAMATION TREATMENT

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
HANF	PUREX TUNNELS MERCURY WASTE	CT	YES	0.003	0.010
HANF	RADIOACTIVE ELEMENTAL MERCURY (CA)	CT	YES	0.300	1.050
INEL	HTRE-3 MERCURY METALLIC	CT	NO	0.000	0.020
LBL	MERCURY INDUCED WASTE	CT	YES	0.020	0.200
MND	MERCURY	CT	YES	0.100	0.020
ORNL	MERCURY (U151)	CT	YES	0.660	0.656
ORNL	MERCURY (D009)	CT	YES	0.090	0.380
PGDP	MIXED EP TOXIC WASTES	CT	YES	0.020	0.080
PORT	ELEMENTAL MERCURY	CT	YES	0.020	0.050
SRS	TRITIATED MERCURY	CT	NO	0.000	0.182
SSFL	MERCURY (D009)	CT	NO	0.000	0.001
WELD	D009	CT	NO	0.000	1.041
WVDP	MERCURY	CT	NO	0.000	0.027
	TOTALS			1.213	3.717

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING WASTEWATER TREATMENT

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
ANLE	RADIOACTIVE CORROSIVE WASTE (LLW)	CT	YES	0.114	0.600
FMPC	USED DEVELOPING/FIXING SOLUTION	T	NO	0.000	0.380
GJPO	CALIBRATION STANDARDS	CT	YES	0.020	0.001
INEL	P&U LISTED RAD CONTAMINATED CONDENSATE	T	YES	11060.000	0.000
INEL	EIT LIQUID WASTE	T	NO	0.000	0.420
INEL	TAN 726 WASTE	T	NO	0.000	102.000
INEL	HTRE-3 CLEANING SOLUTION	CT	NO	0.000	6.900
K25	PROCESS NITRIC ACID WASTE	CT	YES	4.200	18.000
LBL	CORROSIVE LIQUIDS (ACIDS)	CT	YES	0.050	1.000
LEHR	LEHR COR MW-2	CT	NO	0.000	
LLNL	WASTEWATER (COOLANTS & RINSE WATERS)	SCT	YES	33.000	80.260
LLNL	SOLVENT CONTAMINATED WASTE WATERS	S	YES	33.000	14.500
LLNL	CORROSIVE WASTEWATER	CT	YES	7.000	0.800
ORNL	INACTIVE WASTE STORAGE TANK CONTENTS-B	ST	NO	0.000	11.000
ORNL	INACTIVE WASTE STORAGE TANK CONTENTS-A	ST	NO	0.000	1088.000
ORNL	CORROSIVE LIQUIDS (ACIDS)	CT	YES	0.510	3.881
PGDP	URANIUM SALVAGE	CT	YES	3.600	
PORT	NITRIC ACID	CT	NO	0.000	0.400

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING WASTEWATER TREATMENT (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
PORT	GROUND WATER	S	YES	0.500	0.210
PORT	REMEDIAL FACILITY INVESTIGATION-LIQUIDS	S	YES	15.000	46.400
SRS	SRL LOW ACTIVITY WASTE	T	YES	588.000	25.600
SRS	SRL HIGH ACTIVITY WASTE	T	YES	222.000	71.100
SRS	URANIUM AND CHROMIUM IN SOLUTION	T	NO	0.000	0.016
SRS	MERCURY CONTAMINATED HEAVY WATER	T	NO	0.000	8.950
WELD	D002	CT	NO	0.000	3.539
WVDP	THORIUM STANDARD	CT	NO	0.000	0.001
WVDP	BATTERY ACID	CT	NO	0.000	0.002
WVDP	CAUSTIC LIQUID	CT	YES	0.047	0.095
WVDP	SITE DECONTAMINATION SOLUTIONS - D002	CT	NO	0.000	0.228
Y12	AQUEOUS ACIDIC WASTE	CT	YES	983.000	
	TOTALS			12950.041	1484.283

S=Solvent; C=California list; T=Thirds; NA=Not Appplicable

ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING CYANIDE DESTRUCTION TREATMENT

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
ORNL	CYANIDE	T	YES	0.001	0.001
LBL	CYANIDE SOLUTIONS	CT	YES	0.020	0.200
	TOTALS			0.021	0.201

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING METALS RECOVERY OR VARIANCE

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
RFP	BERYLLIUM DUST	T	YES	0.800	1.200
FMPC	BERYLLIUM	T	NO	0.000	1.000
PTX	SILVER BULLET WASTE	T	NO	0.000	155.530
	TOTALS			0.800	157.730

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING VARIOUS TREATMENTS

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
ANLW	U-CD GLOVEBOX WASTE	T	YES	0.210	0.220
ANLW	XYLENE DECONTAMINATION WASTE	S	NO	0.000	0.210
ANLW	PAINT STRIPPING WASTE	S	YES	0.100	0.290
ANLW	CONTAMINATED HG-IBC CASK MAIN	T	YES	0.020	0.019
ANLW	POTASSIUM CHROMATE ON BLOTTER PAPER	T	NO	0.000	0.210
BAPL	DRUM BAL-3964	S	NO	0.000	0.210
BAPL	EXHAUST SYSTEM CHARCOAL FILTERS	S	YES	0.800	2.400
BAPL	M-192 SOLVENT RAGS	S	YES	0.020	0.057
CISS	CADMIUM BALLS/RACK	T	NO	0.000	0.420
FERM	OXYGEN SENSORS	T	YES	0.000	0.000
FERM	FREON CONTAMINATED RAGS	S	YES	0.020	0.004
FERM	ACETONE CONTAMINATED RAGS	S	YES	0.020	0.004
FERM	LEAD COATED STAINLESS STEEL RINGS	T	YES	0.004	0.000
FMPC	OIL RAGS (F002,D010,D018)	ST	NO	0.000	0.340
FMPC	OILY HILCO FILTER CAKE AND MERCO DRY	T	YES	5.000	5.000
FMPC	BATTERIES, FLASHLIGHT/BEEPERS	T	YES	0.000	
FMPC	NON-RECOVERABLE TRASH (F002,D007,10)	ST	NO	0.000	0.370
FMPC	NON-RECOVERABLE TRASH (F00[illegible],2,D008)	ST	NO	0.000	8.750

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING VARIOUS TREATMENTS (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
FMPC	OIL RAGS (F002,D018)	S	NO	0.000	0.320
FMPC	MERCURY SPILL RESIDUE	T	YES	2.000	2.000
FMPC	SCRAP SALTS	T	NO	0.000	521.600
FMPC	OILY CLEANUP MATERIAL	NA	NO	0.000	3.400
FMPC	TBP/KEROSENE SEMISOLID (D018)	NA	NO	0.000	2.900
FMPC	MERCURY-CONTAMINATED MATERIAL	T	YES	1.000	1.000
FMPC	OILY SEMISOLIDS (D018)	NA	NO	0.000	2.200
FMPC	RAGS	S	NO	0.000	0.045
FMPC	SOLVENT CONTAMINATED WOOD PALLETS	S	NO	0.000	2.800
FMPC	OILY SEMISOLIDS (F002)	S	NO	0.000	153.700
FMPC	UNFIRED REDUCTION CHARGES	T	NO	0.000	0.025
FMPC	TBP/KEROSENE SEMISOLID (D001,2,7)	T	NO	0.000	2.900
FMPC	PRESSURE TREATED WOOD	T	NO	0.000	0.440
FMPC	OIL RAGS (F001,2,D010,18)	ST	NO	0.000	1.010
FMPC	OIL RAGS, CLEANUP MATERIALS	S	NO	0.000	0.070
FMPC	SOLVENT CONTAMINATED RAGS	S	NO	0.000	0.093
FMPC	DUST COLLECTOR BAGS	T	NO	0.000	1.500
HANF	SOLVENT ORGANIC SOLID DEBRIS (CA)	SCT	YES	3.720	13.020

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING VARIOUS TREATMENTS (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
HANF	TC METAL ORGANIC SOLID DEBRIS (Hg)	T	YES	0.180	0.630
HANF	SOLVENT INORGANIC SOLID DEBRIS	S	YES	2.100	7.350
HANF	SOLVENT INORGANIC SOLID DEBRIS (CA)	SC	YES	0.100	0.360
HANF	TC METAL INORGANIC SOLID DEBRIS (CA)	CT	YES	0.960	3.360
HANF	TC METAL ORGANIC SOLID DEBRIS	T	YES	6.210	21.740
HANF	TC METAL ORGANIC SOLID DEBRIS (CA,As)	CT	YES	0.300	1.050
HANF	NON-TC METAL/SOLVENT ORG SOLID DEBRIS	T	YES	1.380	4.840
HANF	NON-TC METAL/SOLVENT INORG SOLID DEBRIS	T	YES	0.460	1.620
HANF	PUREX TUNNELS SILVER WASTE	T	YES	0.010	0.200
HANF	TC METAL INORG GLASS SOLID DEBRIS (Hg)	T	YES	1.170	4.110
HANF	RADIOACTIVE GLASS LEAD SOLIDS	T	YES	0.180	0.630
HANF	TC METAL INORGANIC SOLID DEBRIS	T	YES	2.870	10.030
HANF	TC METAL INORGANIC SOLID DEBRIS (Hg)	T	YES	0.330	1.160
HANF	SOLVENT ORGANIC SOLID DEBRIS	ST	YES	22.860	80.010
HANF	WA REG. TC METAL ORG. SOLID DEBRIS	NA	YES	13.470	47.130
HANF	PNL HOT CELL ANALYTICAL WASTE	ST	YES	0.500	
HANF	TC METAL ORGANIC SOLID DEBRIS (CA)	CT	YES	3.160	11.070
HANF	SOLVENT/TC METAL ORG SOLID DEBRIS (CA,Q)	SCT	YES	0.300	1.050

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING VARIOUS TREATMENTS (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
HANF	SOLVENT/TC METAL ORG SOLID DEBRIS (CA)	SCT	YES	0.900	3.150
HANF	SOLVENT/TC METAL ORGANIC SOLID DEBRIS	ST	YES	0.600	2.100
INEL	CADMIUM CONTAMINATED SOLIDS	T	YES	0.340	3.300
INEL	MERCURY CONTAM. SOLIDS SHIELDED W/LEAD	T	YES	1.830	2.040
INEL	RAD. & LEAD CONTAMINATED DEBRIS	T	NO	0.000	0.060
INEL	CADMIUM, MERCURY & SELENIUM CONT SOLIDS	T	YES	0.060	0.030
INEL	CADMIUM AND CHROMIUM CONTAMINATED SOLIDS	T	YES	0.280	0.210
INEL	WERF HEPA FILTERS AND LEAD	T	YES	0.900	5.810
INEL	CHROMIUM AND LEAD CONTAMINATED SOLIDS	T	YES	0.080	0.030
INEL	MERCURY & CADMIUM CONTAMINATED SOLIDS	T	NO	0.000	0.200
INEL	MERCURY CONTAMINATED SOLIDS	T	YES	1.400	3.000
INEL	HNO3 AND LEAD CONTAMINATED FILTERS	T	NO	0.000	3.400
INEL	HTRE-3 SPILL CLEAN-UP MATERIAL	T	NO	0.000	1.040
INEL	SALTS (LLW)	ST	NO	0.000	19.000
INEL	MISCELLANEOUS LLW (PAPER, METAL, ETC.)	ST	NO	0.000	2263.000
INEL	CONTAMINATED CADMIUM SHEETING	T	YES	10.000	0.210
INEL	LABORATORY EQUIPMENT AND DEBRIS	T	YES	0.420	0.420
INEL	COMBUSTIBLES (LLW)	ST	NO	0.000	7245.000

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING VARIOUS TREATMENTS (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
INEL	PAD A RETRIEVED LLW	ST	NO	0.000	10.100
INEL	BENELEX, PLEXIGLASS LLW	ST	NO	0.000	67.000
INEL	GLOVEBOX GLOVES LLW	ST	NO	0.000	5.500
INEL	GLASS (LLW)	ST	NO	0.000	557.000
INEL	NONMETAL MOLDS AND CRUCIBLES LLW	ST	NO	0.000	23.000
INEL	FILTERS LLW	ST	NO	0.000	1743.000
INEL	BA AND CD CALIBRATION SOURCES	T	NO	0.000	0.004
INEL	METALS LLW	ST	NO	0.000	9920.000
INEL	F002 CONTAMINATED SOLIDS	S	YES	0.160	0.030
INEL	RADIOACTIVE SOURCES LLW	T	NO	0.000	9.000
INEL	RESINS (LLW)	ST	NO	0.000	10.000
INEL	OTHER LLW (MERCURY, FUEL SAMPLES, ETC.)	CT	NO	0.000	0.300
INEL	CONCRETE - BRICK LLW	S	NO	0.000	406.800
K25	SOLVENT CONTAMINATED RAGS	S	YES	1.000	3.000
KAPL	SOLID DEBRIS	T	YES	0.020	0.000
KCP	ELECTRONIC ASSEMBLIES (UNCLASSIFIED)	T	YES	0.416	1.040
KCP	PM-147 CLEANUP WASTE	ST	NO	0.000	0.738
KCP	ELECTRONIC ASSEMBLIES (CLASSIFIED)	T	YES	0.100	0.620

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING VARIOUS TREATMENTS (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
KESS	SOLID DEBRIS	T	YES	0.050	0.000
LANL	MERCURY CONTAMINATED PUMPS	T	YES	0.420	1.870
LANL	VARIOUS SPENT SOLVENTS	S	YES	12.000	20.990
LANL	NITRATED RAGS	T	NO	0.000	12.480
LBL	FLAMMABLE SOLIDS	T	YES	0.020	1.400
LLNL	CONTAMINATED EQUIPMENT	ST	YES	3.000	2.500
LLNL	DIOXIN-CONTAM. GLOVES, VIALS, TRASH	D	NO	0.000	0.600
LLNL	CLASSIFIED METAL MIXED WASTE	T	YES	5.000	20.000
LLNL	BIOMEDICAL LABORATORY TRASH/WASTES	ST	YES	1.000	
NRF	CADMIUM SHEETS	T	NO	0.000	0.020
NRF	CHROMATE CONTAMINATED RAGS	T	NO	0.000	0.200
ORNL	FLAMMABLE SOLIDS	T	YES	0.770	3.750
PGDP	SOLVENT LADEN RAGS	S	YES	0.420	0.300
PGDP	MISCELLANEOUS MERCURY CONTAMINATED SOLID	T	YES	0.020	0.620
PGDP	MIXED CORROSIVE WASTE - FILTERS	T	YES	0.500	2.750
PGDP	BRASS CHIPS, TURNINGS	T	YES	0.600	2.100
PGDP	GLASS BEADS - EP TOXIC MIXED	T	YES	0.420	
PORT*	METAL TURNINGS	T	YES	15.000	37.000

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING VARIOUS TREATMENTS (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
PORT	MERCURY VAPOR BULBS	T	YES	4.000	6.500
PORT	CARBON TREATMENT PREFILTERS	S	YES	6.800	0.210
PORT	GLASS BLASTING BEADS	T	YES	0.500	2.700
PORT	SAMPLING EQUIPMENT	S	YES	0.840	0.840
PTX	MERCURY CONTAMINATED METAL	T	YES	4.000	4.000
PTX	WEAPONS PARTS, CLEANING MATERIAL	ST	YES	19.970	16.020
RFP	GROUND GLASS/LLW MIXED	T	YES	1.500	1.910
RFP	FILTERS/LLW MIXED	S	YES	6.200	11.400
RFP	LEADED GLOVES/LLW MIXED	T	YES	0.700	1.890
RFP	COMBUSTIBLES/LLW MIXED	S	YES	50.500	347.990
RFP	PLENUM PREFILTERS	S	YES	2.500	3.790
RFP	INSULATION/LLW MIXED	S	YES	0.500	8.400
RFP	SOLIDIFIED PROCESS SOLIDS/LLW MIXED	ST	NO	0.000	5.630
RFP	LEADED GLOVES/ACID CONTAMINATED/LLW MIXE	T	YES	0.700	0.210
RFP	METAL/LLW MIXED	S	YES	21.000	17.270
SNLA	URANIUM CONTAMINATED EQUIPMENT	T	YES	20.000	1.500
SNLA	HOT CELL FACILITY OPERATION THIRDS-LLW	T	YES	0.800	8.000
SNLA	IRRADIATION FAC.RAD.&MISC.SOURCES THIRDS	T	YES	10.000	8.000

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING VARIOUS TREATMENTS (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
SNLA	DP-ELECTRONIC ASSEMBLIES (H-3 CONT.)	T	YES	0.040	200.000
SNLA	REACTOR/HOT CELL FACILITY THIRDS-LLW	T	YES	8.000	40.000
SNLA	ACCELERATOR PROGRAM ACTIVATED WASTE	ST	YES	30.000	28.000
SNLA	REACTOR/HOT CELL OPERATIONS DEFENSE WSTE	ST	YES	71.000	65.000
SNLA	HEPA FILTERS AND PREFILTERS	T	YES	20.000	3.000
SNLA	U-CONTAMINATED POLYMERIC WEAPON PARTS	T	YES	1.000	0.500
SNLA	ACCELERATOR PROGRAM ACTIVATED THIRDS	T	YES	30.000	20.000
SNLA	DP-ELECTRONIC ASSEMBLIES (NOT H-3 CONT.)	T	YES	10.000	35.000
SRS	TOXIC CLEANUP MATERIAL	T	YES	0.200	0.200
SRS	SOLVENT WASTE <100nCi/g TRU RADIONUCLIDE	ST	NO	0.000	3629.000
SRS	SOLVENT CONTAMINATED APPLICATORS (LLW)	ST	YES	2.900	17.600
SRS	GOLD TRAPS	T	YES	1.850	1.000
SRS	POISONED CATALYST MATERIAL	T	YES	0.011	0.000
SRS	MARK 15 FILTER PAPER - F006	T	NO	0.000	0.800
SRS	ITP FILTERS	T	YES	0.710	0.000
SRS	SAFETY/CONTROL RODS	T	YES	0.010	0.222
SRS	THIRDS WASTE <100nCi/g TRU RADIONUCLIDES	T	YES	8.100	8.100
SRS	SILVER COATED PACKING MATERIALS	T	YES	1.000	5.400

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ATTACHMENT A

LOW-LEVEL MIXED WASTE STREAMS REQUIRING VARIOUS TREATMENTS (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
SRS	SPENT FILTER CARTRIDGES	T	NO	0.000	0.840
SRS	FILTER PAPER TAKE UP ROLLS	T	YES	15.000	229.000
SRS	MERCURY-CONTAMINATED EQUIPMENT	T	YES	3.850	18.700
SRS	CADMIUM COATED HEPA FILTERS	T	YES	8.500	20.400
WELD	D016	T	NO	0.000	0.208
WELD	D040 - PLASTIC DEBRIS	NA	NO	0.000	0.208
WELD	D011	T	NO	0.000	0.833
Y12	SOLVENT CONTAMINATED DEBRIS	S	YES	10.000	37.400
	TOTALS			499.861	28147.251

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ATTACHMENT A

TRANSURANIC MIXED WASTE STREAMS TO BE DISPOSED AT WIPP

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
ANLE	RADIOACTIVE CORROSIVE WASTE (TRU)	CT	YES	0.132	0.700
ANLE	IFR LAB SCALE ELECTRO REFINERY WASTE	T	YES	0.020	0.420
ANLW	ELECTROREFINER STRIPPER CADMIUM	T	YES	0.022	0.000
ANLW	SODIUM - TRU	T	YES	0.001	0.130
ANLW	LEAD SHIELD PLUGS	T	NO	0.000	0.250
ANLW	ELECTROREFINER INSOLUBLES CADMIUM	T	YES	0.019	0.000
ANLW	SODIUM POTASSIUM STORED AT RSWF	T	NO	0.000	0.000
ANLW	TRU-CD HOT CELL WASTE	T	YES	0.420	0.006
ANLW	ELEMENTAL HARDWARE FCF WASTE	T	YES	0.150	0.000
HANF	RADIOACTIVE LEAD SOLIDS,TRU (Hg)	T	YES	0.060	0.210
HANF	RADIOACTIVE LEAD SOLIDS,TRU	T	YES	7.690	26.910
HANF	RADIOACTIVE LEAD GLASS SOLIDS,TRU	T	YES	0.120	0.420
HANF	NON-TC MET/SOLVENT ORG SOLID DEBRIS,TRU	T	YES	1.270	4.430
HANF	RADIOACTIVE LEAD SOLIDS,TRU (LB)	T	YES	0.160	0.570
HANF	ORGANIC RMW PCB LIQUIDS >500PPM,TRU	CT	YES	0.600	2.100
HANF	SOLVENT/TC METAL INORG SOLID DEBRIS,TRU	ST	YES	0.600	2.100
HANF	TC METAL INORGANIC SOLID DEBRIS,TRU (Hg)	T	YES	2.280	7.980
HANF	LEAD ACID BATTERIES,TRU	T	YES	0.180	0.630
HANF	SOLVENT/TC METAL ORG SOLID DEBRIS,TRU	ST	YES	1.520	5.320

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ATTACHMENT A

TRANSURANIC MIXED WASTE STREAMS TO BE DISPOSED AT WIPP (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
HANF	TC METAL INORGANIC SOLID DEBRIS,TRU	T	YES	2.700	9.450
HANF	TC METAL INORG SOLID DEBRIS,TRU (Hg,PCB)	T	YES	18.910	66.180
HANF	TC METAL ORG SOLID DEBRIS,TRU (Hg,PCB)	T	YES	0.910	3.170
HANF	TC METAL ORGANIC SOLID DEBRIS,TRU	T	YES	7.740	27.090
HANF	TC METAL ORGANIC SOLID DEBRIS,TRU (Hg)	T	YES	0.180	0.630
HANF	LEAD ACID BATTERIES,TRU (Hg)	T	YES	0.120	0.420
INEL	PRECERTIFIED WASTE TRU	SCT	NO	0.000	5879.500
INEL	BENELEX, PLEXIGLASS TRU	ST	NO	0.000	34.000
INEL	SALTS (TRU)	ST	NO	0.000	19.000
INEL	CONCRETE - BRICK TRU	S	NO	0.000	109.000
INEL	GLOVEBOX GLOVES TRU	ST	NO	0.000	158.000
INEL	NONMETAL MOLDS AND CRUCIBLES TRU	ST	NO	0.000	329.400
INEL	UNCEMENTED SLUDGES (TRU)	SCT	NO	0.000	6583.000
INEL	CEMENTED TRU SLUDGES	ST	NO	0.000	295.000
INEL	RESINS (TRU)	ST	NO	0.000	79.000
INEL	PARTICULATE WASTES (TRU)	ST	NO	0.000	740.000
INEL	OTHER TRU (MERCURY, FUEL SAMPLES, ETC.)	CT	NO	0.000	3.000
INEL	MISCELLANEOUS TRU (PAPER, METAL, ETC.)	ST	NO	0.000	703.000
INEL	GLASS (TRU)	ST	NO	0.000	846.000

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ATTACHMENT A

TRANSURANIC MIXED WASTE STREAMS TO BE DISPOSED AT WIPP (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
INEL	COMBUSTIBLES (TRU)	ST	NO	0.000	9524.000
INEL	HEPA FILTERS	T	YES	0.680	14.840
INEL	FILTERS TRU	ST	NO	0.000	328.000
INEL	ABSORBED TRU LIQUIDS	T	NO	0.000	538.000
INEL	HEAVY METAL CATCH TANK SLUDGE	T	YES	10.600	2.100
INEL	METALS TRU	ST	NO	0.000	9609.000
INEL	RADIOACTIVE SOURCES TRU	T	NO	0.000	9.000
LANL	INDUSTRIAL LIQUID WASTE TREATMENT PLANT	S	NO	0.000	
LLNL	TOXIC METAL-CONTAMINATED TRU WASTE	T	YES	1.000	1.000
LLNL	SOLVENT-CONTAMINATED TRU WASTE	S	YES	5.000	20.000
LLNL	LEAD-CONTAMINATED SOLID TRU WASTE	T	YES	3.000	3.000
MND	CORROSIVES	CT	YES	0.250	1.900
MND	LEAD - TRU	T	YES	0.250	1.100
NTS	RFP CLASSIFIED TRU IN GCD	S	YES		
NTS	RFP CLASSIFIED TRU	S	YES		
NTS	RFP SLB TRU	S	YES		
NTS	LLNL WIPP TRU	ST	YES		
ORNL	EVAPORATOR SERVICE TANK SLUDGES	CT	YES	3.000	220.000
ORNL	INACTIVE WASTE STORAGE TANK CONTENTS-D	T	NO	0.000	110.000

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ATTACHMENT A

TRANSURANIC MIXED WASTE STREAMS TO BE DISPOSED AT WIPP (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
ORNL	TRU WASTE	T	YES	40.000	680.000
ORNL	MELTON VALLEY STORAGE TANK SLUDGES	CT	YES	4.000	390.000
PGDP	TRU & TC WASTE	CT	NO	0.000	0.420
PGDP	TRU SOLIDS	CT	NO	0.000	0.630
PGDP	EP TOXIC MIXED WASTE (Technetium/liq.)	CT	NO	0.000	1.260
PGDP	EP TOXIC MIXED WASTE (Technetium/SOLIDS)	CT	NO	0.000	0.960
PGDP	TRU LIQUID	CT	NO	0.000	0.650
RFP	HEAVY METAL (NON-SS)/TRU MIXED	T	NO	0.000	5.620
RFP	SPENT ABSORBENT/TRU (OIL DRI)	S	YES	0.200	0.210
RFP	FIREBRICK-PULVERIZED OR FINES	ST	NO	0.000	0.630
RFP	PARTICULATE-SLUDGE/TRU MIXED (2)	ST	YES	14.700	33.730
RFP	SOLIDIFIED ORGANICS/TRU MIXED	S	YES	4.500	102.050
RFP	COMBUSTIBLE WASTE/TRU MIXED	S	YES	24.000	223.370
RFP	METAL/TRU MIXED	ST	YES	1.200	114.340
RFP	SOLIDIFIED LAB WASTE	ST	YES	4.600	1.250
RFP	MISCELLANEOUS WASTE/TRU MIXED	S	YES	1.000	1.870
RFP	LEADED GLOVES/TRU MIXED	ST	YES	7.300	18.110
RFP	PARTICULATE SLUDGE WASTE/TRU MIXED	ST	YES	0.000	15.610
RFP	FLUIDIZED BED INCINERATOR ASH (TRU)	T	NO	0.000	1.030

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ATTACHMENT A

TRANSURANIC MIXED WASTE STREAMS TO BE DISPOSED AT WIPP (cont'd)

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
RFP	FILTER WASTE/TRU	S	YES	0.000	49.110
RFP	LEADED GLOVES/ACID CONTAMINATED/TRU MIXE	T	YES	11.900	23.320
RFP	LEAD/TRU MIXED	T	YES	0.460	2.700
RFP	GROUND GLASS/TRU MIXED	T	YES	0.280	0.210
RFP	AQUEOUS SLUDGE/TRU MIXED	ST	YES	0.700	141.150
SNLA	HOT CELL FACILITY OPERATION THIRDS - TRU	T	YES	0.200	0.000
SNLA	REACTOR/HOT CELL FACILITY THIRDS-TRU	T	YES	2.000	40.000
SRS	THIRDS TRU WASTE	T	YES	24.500	20.600
SRS	SOLVENT TRU WASTE	ST	NO	0.000	3583.000
SRS	MIXED TTA/XYLENE	T	YES	0.020	0.010
SSFL	LEAD - TRU	T	YES	0.020	0.004
WVDP	PU EXTRACTION WASTE	T	YES	0.010	0.019
	TOTALS			211.174	41770.819

S=Solvent; C=California list; T=Thirds; NA=Not Appplicable

ATTACHMENT A

HIGH-LEVEL MIXED WASTE AND TANK WASTE REQUIRING VITRIFICATION AND STABILIZATION

SITE	WASTESTREAM NAME	LDR CATEGORY	STILL GENERATED	GEN RATE M3/YR	INVENTORY M3 END 1990
HANF	DST PFP TRU SOLIDS	CT	YES	227.000	269.000
HANF	DST PUREX CRW SOLIDS	CT	YES	319.000	2498.000
HANF	DST PUREX AGING WASTE	CT	YES	464.000	7237.000
HANF	DST MISCELLANEOUS LLW	SCT	YES	12856.000	36261.000
HANF	DST DOUBLE SHELL SLURRY FEED	SCT	YES	0.000	15754.000
HANF	SINGLE SHELL TANK WASTES	SCT	NO	0.000	139500.000
HANF	DST COMPLEX CONCENTRATE	SCT	NO	0.000	11061.000
HANF	DST DOUBLE SHELL SLURRY	SCT	NO	0.000	7880.000
HANF	DST DILUTE COMPLEXED WASTE	SCT	NO	0.000	3410.000
HANF	DST CONCENTRATED PHOSPHATE DECON WASTE	CT	NO	0.000	3865.000
INEL	HIGH LEVEL WASTE CALCINE	T	YES	465.000	3542.000
INEL	HIGH LEVEL LIQUID WASTE	CT	YES	2500.000	9091.000
SRS	221-F CANYON HIGH LEVEL LIQUID WASTE	CT	YES	1700.000	54719.000
SRS	221-H CANYON HIGH LEVEL LIQUID WASTE	CT	YES	4000.000	64825.000
SRS	244-H RBOF HIGH ACTIVITY LIQUID WASTE	CT	YES	2864.000	12319.000
WVDP	HLW ION EXCHANGE MEDIA	T	YES	21.230	42.470
WVDP	HIGH-LEVEL WASTE SLUDGE	CT	NO	0.000	2600.000
WVDP	HIGH-LEVEL WASTE (HLW) SUPERNATANT	CT	NO	0.000	5360.000
	TOTALS			25416.230	380233.470

S=Solvent; C=California list; T=Thirds; NA=Not Appplicable

[FR Doc. 92-79344 Filed 12-2-92; 8:45 am]
BILLING CODE 6460-01-C

Office of Fossil Energy

[FE Docket No. 90–11–NG]

Encogen Four Partners, L.P.; Order Amending Conditional Order and Granting Final Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Encogen Four Partners, L.P. final long-term authorization to import up to 14,800 MMBtu (15,579 Mcf @ 950 Btu/cf) of Canadian natural gas per day over a 15-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 25, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–29340 Filed 12–2–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–116–NG]

Encogen Northwest, L.P.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Encogen Northwest, L.P. (Encogen) long-term authorization to import up to 9,579 Mcf of Canadian natural gas per day, plus unspecified additional amounts, beginning January 1, 1993, and continue for 15 years following the commencement of commercial operation of Encogen's Bellingham, Washington cogeneration facility.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington DC 20585. (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 25, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–29343 Filed 12–2–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–126–NG]

Union Gas Limited; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Union Gas Limited blanket authorization to export up to a total of 200 Bcf of natural gas to Canada, including liquefied natural gas (LNG), and import (for export to Canada) up to a total of 100 Bcf of natural gas, including LNG, from Canada over a two-year term beginning on the date of first delivery after December 31, 1992.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 25, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–29342 Filed 12–2–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–137–NG]

WAL/OX; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting WAL/OX blanket authorization to import up to 30 Bcf of natural gas from Canada over a two-year term, beginning on the date of first import delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 25, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–29341 Filed 12–2–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4541–9]

Proposed Consent Decree; Refrigerant Recycling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed consent decree concerning litigation instituted against the Environmental Protection Agency ("EPA") regarding the fact that EPA has not promulgated a final rule to implement section 608(a)(1) of the Clean Air Act, which requires EPA to promulgate regulations "establishing standards and requirements regarding the use and disposal of class I substances during the servicing, repair, or disposal of appliances and industrial process refrigeration." The proposed consent decree provides that, by April 23, 1993, EPA is to promulgate the regulations required by section 608(a)(1), which will concern the recapture and recycling of ozone-depleting refrigerants during the servicing and disposal of air conditioning and refrigeration equipment.

For a period of thirty [30] days following the date of publication of this notice, the Agency will receive written comments relating to the consent decree. EPA or the Department of Justice may withhold or withdraw consent to the proposed consent decree if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the consent decree are available from Betty S. Mobley, Air and Radiation Division (LE–132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7606. Written comments should be sent to

Kevin W. McLean at the above address and must be submitted on or before January 4, 1993.

Dated: November 24, 1992.

Raymond B. Ludwiszewski,

Acting General Counsel.

[FR Doc. 92–29329 Filed 12–2–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4541–8]

Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act; Panama Machinery and Equipment Company, Inc., et al.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency ("EPA") is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"). Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liabilities of one corporation and three individuals for costs incurred by EPA for response activities at two sites, one in Klickitat County, Washington and the other in Molalla, Oregon.

DATES: Comments must be provided on or before January 4, 1993.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 10, SO–155, 1200 Sixth Avenue, Seattle, Washington, 98101, and should refer to: In the Matter of: Panama Machinery and Equipment Company, Inc., et al., U.S. EPA Docket No. 109106–04–106/3008.

FOR FURTHER INFORMATION CONTACT: Martha A. Fox, U.S. Environmental Protection Agency, Office of Regional Counsel, SO–155, 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 553–5118.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (CERCLA), notice is hereby given of a proposed administrative settlement concerning clean up and disposal of hazardous substances found on pasture land in Wahkiacus, Klickitat County, Washington, and on a truck trailer found on property utilized by Molalla Transport Systems, Inc., located in Molalla, Oregon.

Panama Machinery and Equipment Company, Inc., Manney Berman, Leon Berman and Leonard Berman, and the U.S. Environmental Protection Agency, Region 10 have signed the proposed administrative settlement agreement. The proposed agreement has been approved by the United States Department of Justice, and is subject to review by the public pursuant to this Notice.

EPA is entering into this agreement under the authority of sections 122(h) and 107 of CERCLA, 42 U.S.C. 9622(h) and 9607. Section 122(h) authorizes EPA to settle a claim for response costs in a case where the claim has not already been referred to the U.S. Department of Justice. Under this authority, the settlement agreement proposes to release Panama Machinery and Equipment Company, Inc. and the Bermans from CERCLA section 107 liability for response costs in exchange for payment of restitution the company has been ordered to pay in a related criminal case. Under the terms of the settlement agreement, the parties are also released from RCRA civil penalty liability.

Panama Machinery and Equipment Company, Inc. is incorporated under the laws of the State of Washington. Its president and principal owner is Manney Berman. The company, which does business under the names of Everett Steel Companies, Everett Pipe and Steel, Everett Anchor and Chain, and Everett Wheelabrating and Priming, among others, operates a facility in Everett, Washington. Leonard Berman and Leon Berman are vice-presidents of the company.

On January 21, 1992, Manney Berman, Leon Berman, Leonard Berman and Panama Machinery and Equipment Company each pleaded guilty to a one-count Information charging a conspiracy to violate the Resource Conservation and Recovery Act (RCRA) in connection with the storage, transportation and disposal of hazardous wastes found at the sites in Klickitat County, Washington and Molalla, Oregon.

EPA conducted removals during the summer of 1991 at both of these sites. Approximately 300 55-gallon drums of paint waste and other materials were removed, along with contaminated soils, from the Klickitat County, Washington site. Additional 55-gallon drums and a dumpster holding approximately 400 containers of other paint wastes were removed from the Molalla site. These items were stored as evidence at a licensed TSD facility while awaiting court permission to destroy them. EPA's response work at these two sites is completed.

On June 15, 1992, the Bermans were each sentenced to twelve months imprisonment. Panama Machinery and Equipment Company, Inc. was sentenced to five years probation and ordered to pay restitution in the amount of $497,458.19 to EPA Superfund for the costs of clean-up, transportation, storage and disposal of the substances that were found at the two sites. Payment of the restitution was conditioned on the company receiving a release from the government as provided for in its plea agreement.

The Environmental Protection Agency will receive written comments relating to this proposed settlement for a period of thirty (30) days from the date of this publication.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from EPA's Region 10 Office of Regional Counsel, SO–155, 1200 Sixth Avenue, Seattle, Washington 98101. The Administrative Record for the Klickitat County, Washington and Molalla, Oregon sites may be examined at the EPA Region 10 office, Lynn M. Williams, Administrative Records Coordinator, Superfund Branch, 1200 Sixth Avenue, Seattle, Washington, 98101.

Authority: The Comprehensive Environment Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Dana A. Rasmussen,

Regional Administrator.

[FR Doc. 92–29330 Filed 12–2–92; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–140201; FRL–4175–9]

Access to Confidential Business Information by ICF International, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, ICF International, Incorporated (ICF), of Fairfax, Virginia, for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D9–0068, contractor ICF, of 9300 Lee Highway, Fairfax, VA, will assist EPA in the development and the implementation of national regulations for the protection of stratospheric ozone.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D9–0068, ICF will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. ICF personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the **Federal Register** of January 29, 1992 (57 FR 3430), ICF was authorized for access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA. EPA is issuing this notice to extend ICF's access to TSCA CBI under an extension of contract number 68–D9–0068. EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide ICF access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and ICF's Fairfax, VA and 1850 K St., NW., Washington, DC facilities only.

ICF will be authorized access to TSCA CBI at its facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. Before access to TSCA CBI is authorized at ICF's sites, EPA will approve ICF's security certification statements, perform the required inspection of its facilities, and ensure that the facilities are in compliance with the manual. Upon completing review of the CBI materials, ICF will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until March 31, 1993.

ICF personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: November 20, 1992.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–29327 Filed 12–2–92; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140202; FRL–4176–1]

Access to Confidential Business Information by Munter's Moisture Control Services Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Munter's Moisture Control Services Company (MMCS), of Elk Ridge, Maryland, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under a procurement, contractor MMCS, of 6671 Santa Barbara Road, Elk Ridge, MD, will assist the Office of Pollution Prevention and Toxics (OPPT) in providing emergency restoration of water damaged documents held by the OPPT Document Control Officer.

In accordance with 40 CFR 2.306(j), EPA has determined that under the procurement, MMCS will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. MMCS personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide MMCS access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this procurement will take place at EPA Headquarters only.

Clearance for access to TSCA CBI under this contract is temporary and may continue only until the document restoration is completed.

MMCS personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: November 20, 1992.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–29328 Filed 12–2–92; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140200; FRL–4175–3]

Access to Confidential Business Information by Syracuse Research Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Syracuse Research Corporation (SRC), of Syracuse, New York, for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D2–0182, contractor SRC, of Merrill Lane, Syracuse, NY, will assist the Office of Pollution Prevention and Toxics (OPPT) in reviewing new chemical submissions, and in creating and updating chemical data bases of existing chemicals.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D2–0182, SRC will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. SRC personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide SRC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and SRC's Syracuse NY, and 1100 6th St., SW., Washington, DC facilities only.

SRC will be authorized access to TSCA CBI at its facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. Before access to TSCA CBI is authorized at SRC's sites, EPA will approve SRC's security certification statements, perform the required inspections of its facilities, and ensure that the facilities are in compliance with the manual. Upon completing review of the CBI materials, SRC will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1996.

SRC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: November 20, 1992.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-29326 Filed 12-2-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

[Agreement No. 202-011259-003]

United States/Southern Africa Conference; Correction

Notice of the filing of Agreement No. 202-011259-003, published on November 4, 1992 (57 FR 52627), indicated that the amendment number assigned was 003. It should have read 004.

Dated: November 27, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-29277 Filed 12-2-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Huntington Bancshares Incorporated, Columbus, OH; Application To Engage De Novo in Underwriting and Dealing in Certain Bank-Ineligible Securities on a Limited Basis, and Other Securities-Related Activities

Huntington Bancshares Incorporated, Columbus, Ohio (Applicant), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23 of the Board's Regulation Y (12 CFR 225.23), to engage *de novo* in various securities and securities related activities described below. These activities will be conducted on a nationwide basis.

Applicant proposes to engage *de novo* in the following activities previously authorized by the Board: Providing investment advisory services and financial advisory services permitted by 12 CFR 225.25(b)(4); and underwriting and dealing in governmental obligations and money market instruments pursuant to 12 CFR 225.25(b)(16).

Applicant also proposed to engage in activities which previously have been determined by the Board to be closely related to banking. Applicant proposes to engage *de novo* in acting as agent for issuers and holders of securities of all types with respect to the private placement of such securities, including: making recommendations regarding the terms and timing of a private offering or resale of securities; assisting in the preparation of private placement memoranda with respect to the securities being offered or sold, the issuer thereof, and the terms of the offer or resale; identifying and contacting a limited number of sophisticated investors to determine their interest in purchasing such securities, and arranging in any such purchase; taking prospective investors' comments on the terms of the placement, and advising on and assisting in negotiations between the seller and prospective investors. Applicant proposes to act as a riskless principal in the purchase and sale of all types of securities on the order of investors. Applicant proposes to underwrite and deal in certain bank-ineligible securities, specifically municipal revenue bonds (including public ownership industrial development bonds), mortgage-related securities, consumer-receivable-related securities, and commercial paper. Finally, Applicant proposes to provide securities brokerage services to institutional and retail customers, both separately and in combination with investment advisory services permissible under 12 CFR 225.25(b)(4) pursuant to 12 CFR 225.25(b)(15).

Section 4(c)(8) of the BHC Act provides that a bank holding company may with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto.) This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, "closely related to banking." Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

Based on the guidelines established in *National Courier Association v. Board of Governors of the Federal Reserve System*, 516 F.2d 1229, 1237 (D.C. Cir. 1975), a particular activity may be found to meet the "closely related to banking test" if it is demonstrated that: (1) Banks generally have in fact provided the proposed activity; (2) banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or (3) banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. The "National Courier" guidelines are not, however, the exclusive basis for finding activity closely related to banking, and the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking.

Applicant believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has previously authorized private placement and riskless principal activities, subject to certain prudential limitations which address the potential for conflicts of interest, unsound banking practices, and other adverse effects. *See, e.g., J. P. Morgan and Company, Inc.*, 76 Federal Reserve Bulletin 26 (1990); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989). The Board has also previously authorized bank holding companies to underwrite and deal in bank-ineligible securities, provided that the underwriting subsidiary derives no more than 10 percent of its total gross revenue from underwriting and dealing in the

approved securities over any two-year period. *See Citicorp*, 73 Federal Reserve Bulletin 473 (1987) *aff d sub nom. Securities Industry Association* v. *Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir. 1988), *cert. denied*, 108 S. Ct. 2830 (1988); *see also Chemical New York Corporation*, 73 Federal Reserve Bulletin 731 (1987), *modified by Order Approving Modifications to Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989). The Board has also previously authorized bank holding companies to provide full-service brokerage services to retail customers with respect to ineligible securities which the subsidiary may hold as principal in connection with its authorized underwriting and dealing activities. *See, e.g., PNC Financial Corporation*, 75 Federal Reserve Bulletin 396 (1989).

In conducting these activities, Applicant will comply with the commitments and the prudential limitations established by the Board in previous Orders. Accordingly, Applicant contends that the proposed activities are functionally similar to those currently being conducted by banks and bank holding companies and are therefore closely related to banking.

Applicant takes the position that the proposed activities will benefit the public. Applicant believes that the proposed activities will promote competition, provide added convenience to this customers, and gains in efficiency. Moreover, Applicant believes that these benefits will outweigh any possible adverse effects of the proposed activities and that, indeed, no adverse effects are currently foreseen.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 18, 1992. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how that party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland.

Board of Governors of the Federal Reserve System, November 30, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–29426 Filed 12–2–92; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90F–0414]

Kay-Ray/Sensall, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 0M4202) proposing that the food additive regulations be amended to provide for the safe use of an americium 241/beryllium neutron source for food inspection or to control food processing.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hansen, Center for Food Safety and Applied Nutrition (HFF–333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 11, 1991 (56 FR 1198), FDA announced that a food additive petition (FAP 0M4202) had been filed by Kay-Ray/Sensall, Inc., 1400 Business Center Dr., Mt. Prospect, IL 60056. The petition proposed that § 179.21 (21 CFR 179.21) of the food additive regulations be amended to provide for the safe use of an americium 241/beryllium neutron source for food inspection or to control food processing. Kay-Ray/Sensall, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: November 20, 1992.

Robert L. Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–29295 Filed 12–2–92; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–4370–03]

Hearing To Discuss the Use of Helicopters and Motorized Vehicles in the Gathering and Transportation of Wild Horses and Burros

AGENCY: Bureau of Land Management, Interior.

ACTION: Public hearing to discuss the use of helicopters and motorized vehicles in the gathering and transportation of wild horses and burros during FY–93.

SUMMARY: In accordance with Public Law 92–195, as amended by Public Law 94–579 and Public Law 95–514, this notice sets forth the public hearing date to discuss the use of helicopters and motorized vehicles in the gathering and transportation of wild horses and burros from the Winnemucca District during FY–93.

The hearing will convene at 4 p.m. on Friday, January 8, 1993, in the Conference Room of the Bureau of Land Management, 705 East Fourth Street, Winnemucca, Nevada.

The hearing is open to the public. Interested persons may make oral or written statements. Anyone wishing to make oral comments should contact Ron Hall, Winnemucca District Wild Horse and Burro Specialist, by January 4, 1993. Written statements must be received by January 8, 1993.

Summary minutes of the hearing will be maintained in the Winnemucca District Office of the BLM and available for public inspection during regular business hours within 30 days following the date of the hearing.

Dated: November 23, 1992.

Les Boni,

Acting District Manager, Winnemucca.

[FR Doc. 92–29260 Filed 12–2–92; 8:45 am]

BILLING CODE 4310–HC–M

[ID–943–03–4210–04; IDI–27422, IDI–28095, IDI–28601]

Notice of Exchanges and Order Providing for Opening of Public Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange and opening order.

SUMMARY: The United States has issued three exchange conveyance documents as shown below under section 206 of the Federal Land Policy and

Management Act. In addition to providing official public notice of the exchanges, this document contains an order which opens lands received by the United States to the public land, mining, and mineral leasing laws.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384–3163.

1. In three exchanges made under the provisions of section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been conveyed from the United States:

Boise Meridian

IDI–27422 (Conveyed to Pancheri, Inc., of Howe, Idaho)

T. 5 N., R. 29 E.,
Sec. 5, SE¼NE¼;
Sec. 14, S½SE¼.
T. 7 N., R. 27 E.,
Sec. 1, lots 1 to 4, inclusive, and S½N½.
T. 7 N., R. 28 E.,
Sec. 5, W½SW¼;
Sec. 6, lots 1 to 5, inclusive, S½NE¼, SE¼NW¼, and NE¼SE¼.
T. 8 N., R. 28 E.,
Sec. 31, lots 3 and 4 and E½SW¼.

IDI–28095 (Conveyed to Idaho Power Company, of Boise, Idaho)

T. 7 S., R. 17 E.,
Sec. 11, NE¼NE¼ and W½NE¼;
Sec. 12, N½NW¼ and SE¼NW¼.

IDI–28601 (Conveyed to Highland Part and Parcels, Inc., of Hailey, Idaho)

T. 9 S., R. 17 E.,
Sec. 15, N½SW¼NE¼, N½SE¼NW¼, N½NE¼SW¼NW¼, and W½SW¼SE¼;
Sec. 22, E½E½NE¼, E½W½E½NE¼, E½W½W½SE¼NE¼, E½SE¼, and E½E½SW¼SE¼.

Comprising 1,497.16 acres of public land.

2. In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

(Acquired from Pancheri, Inc.)
T. 9 N., R. 26 E.,
Sec. 19, SE¼;
Sec. 20, SW¼;
Sec. 30, NE¼ and NE¼SE¼.
T. 11 N., R. 26 E.,
Sec. 32, NE¼;
Sec. 33, W½NE¼, NE¼NW¼, and SE¼.
T. 9 N., R. 27 E.,
Sec. 20, NE¼NE¼.
(Acquired from Idaho Power Company)
T. 10 N., R. 21 E.,
Sec. 2, SW¼SW¼ less U.S. Highway 93A right-of-way, and SE¼SW¼;
Sec. 3, NW¼ less U.S. Highway 93A right-of-way, SW¼NE¼ less U.S. Highway 93A right-of-way, NE¼SE¼ less U.S. Highway 93A right-of-way, SE¼NE¼, and NW¼NE¼;
Sec. 4, SE¼NE¼ less U.S. Highway 93A right-of-way.
T. 11 N., R. 21 E.,
Sec. 33. SE¼SE¼;
Sec. 34, S½SW¼.
(Acquired from Highland Part and Parcels, Inc.)
T. 2 N., R. 19 E.,
Sec. 4, N½SW¼, NW¼SE¼, and S½SE¼;
Sec. 5, SE¼;
Sec. 7, S½SE¼;
Sec. 8, W½NE¼, S½SW¼, and SE¼;
Sec. 9, NE¼NE¼, W½NE¼, W½, and NW¼SE¼;
Sec. 16, N½NE¼, NW¼, and W½SW¼;
Sec. 17, W½E½, NW¼, N½SW¼, and SE¼SW¼;
Sec. 18, E½E½, NW¼NE¼, SE¼SW¼, and SW¼SE¼;
Sec. 19, lot 5, NE¼SW¼, W½NE¼, and SE¼NW¼;
Sec. 20, NW¼SW¼.

Also lands within secs. 19, 20, and 30 described by metes and bounds. Comprising 4,429.22 acres of private land.

The purpose of the exchanges was to acquire non-Federal lands which have high public values for water storage, increased water and forage for livestock, public access, recreation, wildlife and riparian habitat. The public interest was well served through completion of each exchange. The values of the Federal and private lands involved in the Pancheri exchange were each appraised at $150,000. The values of the Federal and private lands involved in the Idaho Power Company exchange were each appraised at $84,000. The values of the Federal and private lands involved in the Highland Part and Parcels, Inc. exchange were each appraised at $287,000.

3. At 9 a.m. on January 4, 1993, the reconveyed private lands described in paragraph 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on January 4, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on January 4, 1993, the reconveyed private lands described in paragraph 2 will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in paragraph 2 under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: November 23, 1992.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 92–29334 Filed 12–2–92; 8:45 am]

BILLING CODE 4310–GG–M

[ID–060–02–4210–05; IDI–20220]

Realty Action, Sale of Public Land in Shoshone County, ID

AGENCY: Bureau of Land Management.

ACTION: Sale of public land in Shoshone County.

SUMMARY: The following-described public land has been examined and through the public-supported land use planning process has been determined to be suitable for disposal by direct sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 at no less than the appraised fair market value of $3,000. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Boise Meridian

T. 48 N., R. 3 E.,
Sec. 15, lot 21.

The area described contains 0.66 acres in Shoshone County, Idaho.

The patent, when issued, will contain a reservation to the United States for ditches and canals.

DATES: Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining and mineral leasing laws, except the sale provisions of the Federal Land Policy and Management Act. The segregative effect will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

ADDRESSES: Coeur d'Alene District Office, 1808 N. Third Street, Coeur d'Alene, Idaho 83814.

FOR FURTHER INFORMATION CONTACT: Scott Forssell, Realty Specialist, at the address shown above or (208) 769–5000.

SUPPLEMENTARY INFORMATION: This land is being offered by direct sale to William

Harrison, et al., of Spokane, Washington, based on historic use and value of added improvements. Failure or refusal of Mr. Harrison, et al., to submit the required amount will result in cancellation of the sale.

It has been determined that the subject parcel has no known mineral values; therefore, mineral interests will be conveyed simultaneously. A separate nonrefundable filing fee of $50 is required from the purchaser for conveyance of the mineral interests.

For a period of 45 days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, Coeur d'Alene District, at the above address. Any adverse comments will be reviewed by the District Manager, who may vacate or modify this realty action to accommodate the protest. If the protest is not accommodated, the comments are subject to the review of the State Director who may sustain, vacate, or modify this realty action. This realty action will become the final determination of the Department of the Interior.

Dated: November 24, 1992.

John B. O'Brien, III,

Acting District Manager.

[FR Doc. 92–29335 Filed 12–2–92; 8:45 am]

BILLING CODE 4310–GG–M

[UT–080–03–4920–10–4174]

Realty Action; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action and plan amendment; exchange of public lands in Uintah County, Utah (UTU–63982).

SUMMARY: The following described public lands, located in Uintah County, Utah are being considered for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Salt Lake Meridian, Utah

T. 1 N., R. 24 E.,
Sec. 35, W½NW¼.
T. 1 S., R. 24 E.,
Sec. 15, W½SW¼, NE¼SE¼;
Sec. 24, W½NW¼.
Containing 280 acres.

Notice is hereby given that the Bureau of Land Management's Vernal District Office is preparing an environmental assessment and amendment to the Diamond Mountain Management Framework Plan to consider a land exchange between the National Park Service and the Utah Division of Wildlife Resources. The exchange would allow for the acquisition of non-Federal lands within the Dinosaur National Monument. Reduction of the State inholdings would improve the management of the lands and would be consistent with the objectives and intent of the national monument designation.

Issues to be considered in the preparation of the environmental assessment will include, but not be limited to, wildlife habitat, recreation, watershed, riparian values, water quality, land uses, paleontological and cultural resources, and threatened and endangered plants and animals. An interdisciplinary team will prepare the environmental assessment.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public lands laws, including the mining and mineral leasing laws. This segregative effect will expire upon the issuance of a patent or two years from the date of publication, whichever occurs first.

For a period of 45 days after publication of this notice in the **Federal Register**, interested parties may submit written comments to the District Manager, Vernal District Office, 170 South 500 East, Vernal, Utah 84078. For further information, contact Joy Wehking, Realty Specialist, at (801) 789–1362.

Dated: November 13, 1992.

David E. Little,

District Manager.

[FR Doc. 92–29336 Filed 12–2–92; 8:45 am]

BILLING CODE 4310–DQ–M

Bureau of Reclamation

Realty Action; California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described tract of land has been identified for disposal under the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), at no less than the appraised fair market value. The Bureau of Reclamation (Reclamation) will accept bids on the land described below and will reject any bids for less than $159,000, the appraised value.

DATE: February 3, 1993.

FOR FURTHER INFORMATION CONTACT: Bill Sanford, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630; telephone (916) 989–72717.

SUPPLEMENTARY INFORMATION: The property is described as a parcel of land in the Rancho Rio de los Americanos (Projected Section 36, Township 9 North, Range 6 East, Mount Diablo Base and Meridian), being a portion of Tract Three as described in the Declaration of Taking recorded June 26, 1970 in Book 70–06–26 at Page 314, Official Records of Sacramento County, California, containing 1.52 acres, more or less. The land will be offered for sale through the competitive bidding process. A sealed bid sale will be held at the Reclamation at the above address on February 3, 1993, at which time the sealed bids will be opened. Sealed bids will be accepted at the Folsom Office until close of business on February 2, 1993. Reclamation may accept or reject any and all offers or withdraw any land or interest in land for sale if, in the opinion of the Regional Director, consummation of the sale would not be fully consistent with the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), or other applicable laws. Should the land remain unsold, it may be reoffered for sale at a later date as determined by the Regional Director. In order to promote full and free competition, the bid forms required for this sale contain a statement that the purchase price has been determined independently by the bidder; this statement must accompany each sealed bid.

The sale of the land is consistent with the Reclamation land use planning, and it was determined that the public interest would best be served by offering this land for sale.

Resource clearances consistent with the National Environmental Policy Act requirements have been completed and approved. A Categorical Exclusion Checklist is available for public review at the Folsom office. The quitclaim deed issued for the land sold will be subject to easements or rights-of-way existing or of record in favor of the public or third parties. There will a perpetual easement granted to the Sacramento Municipal Utility District for the use of an existing aboveground substation and a buried cable; this easement will be recorded prior to recording the quitclaim deed.

For a period of 60 days from the date of this notice, interested parties may submit comments to the Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825. Any adverse comments will be evaluated by the Regional Director who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Realty Action will become the final determination of the Department of the Interior.

Dated: November 27, 1992.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 92–29291 Filed 12–2–92; 8:45 am]

BILLING CODE 4310–09–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–774175.

Applicant: Frederick L. Williams, Fairfax Station, VA.

The applicant requests a permit to import the sport-hunted trophy of one male bonetebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by W.S. Murray, P.O. Box 237, Graaff Reinet, Groothoek, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–774095.

Applicant: Zoological Society of San Diego, San Diego, CA.

The applicant requests a permit to import one captive-born female pigmy chimpanzee (*Pan paniscus*) from the Twycross Zoo, Atherstone, Great Britain, for captive breeding.

PRT–773932.

Applicant: Charles Sammut, Salinas, CA.

The applicant requests a permit to import and re-export one captive-born male jaguar (*Panthera onca*) from the Northern Animal Exchange, Quebec, Canada, for the purpose of conservation education.

PRT–773861.

Applicant: City of San Jose Zoo, San Jose, CA.

The applicant requests a permit to import one male and two female parma, removed from the wild in Kawau Island, New Zealand, for the purpose of enhancement of propagation and survival of the species.

PRT–761983.

Applicant: James R. Spotila, Philadelphia, PA.

This amends the **Federal Register** notice published October 8, 1991. The applicant requests a permit to import live and dead eggs and hatchlings (taken from doomed nests), tissue samples, and blood from leatherback sea turtles (*Dermochelys coriacea*) and green sea turtles (*Chelonia mydas*) from Costa Rica and the Grand Cayman Islands for scientific research. The applicant also requests authorization to euthanize the imported live turtles as part of the scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45 a.m. to 4:15 p.m.) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: ((703)/358–2104); FAX: ((703)/358–2281).

Dated: November 27, 1992.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92–29279 Filed 12–2–92; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 Sub 1108X]

Consolidated Rail Corp.; Abandonment Exemption in Baltimore City, MD

Consolidated Rail Corporation has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 1.24-mile Presidential Street Branch extending between the east side of South Conkling Street (approximately milepost 1.41) and the east side of Wagner Street (approximately milepost 2.65), in Baltimore City, MD.[1]

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(b), 49 CFR 1105.8(c), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to the use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on January 2, 1993, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 14, 1992.[4] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 23, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: John J. Paylor, Consolidated Rail Corporation, 2001 Market Street 16A, Two Commerce Square, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has not filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. Instead, it refers to the environmental report prepared and submitted with the application filed in *MIC Abandonment*.[5] Applicant requests that the environmental documentation which would otherwise be required for this proceeding be waived. This notice is subject to action by SEE, under the

[1] A 680-foot portion of the line which is the subject of this notice of exemption is also the subject of an adverse abandonment application currently pending before the Commission in Docket No. AB–167 (Sub-No. 1102), *David H. Murdock d/b/a Murdock Investment Company—Abandonment—Consolidated Rail Corporation Line in Baltimore, MD (MIC Abandonment).*

[2] A stay will be issued routinely where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment (SEE), cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

[3] See, *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

[5] Note 1, *supra*.

delegation of authority at 49 CFR 1105.2, on the waiver request.

SEE will prepare an appropriate environmental document. Interested persons may obtain a copy of that document by contacting John O'Connell, Interstate Commerce Commission, room 3214, Washington, DC 20423, (202) 927–6215.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 27, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–29339 Filed 12–2–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 28905 (Sub 22); 29430 (Sub-No. 20)]

CSX Corp., et al.; Arbitration Review

In the matter of CSX Corp., Control, Chessie System, Inc. and Seaboard Coast Line Industries, Inc.; Norfolk Southern Corp. Control, Norfolk and Western Railway Co. and Southern Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of intent to participate—due date.

SUMMARY: By decision served November 13, 1992 (Notice published at 57 FR 54104 November 16, 1992), the Commission reopened these proceedings and invited the parties to these cases, and other interested persons, to submit additional comments and replies as they deem appropriate with regard to any issues in these cases that remain open for reconsideration in light of the Supreme Court's decision in *Norfolk & Western* versus *American Train Dispatchers*, _____U.S. _____, 111 S.Ct. 1156 (1991). The decision and Notice overlooked, however, the need to prepare a new service list. This notice addresses that omission by setting a due date for all interested persons, whether they already are parties of record or not, to submit notices of intent to participate.

DATES: Any person whether or not already a party of record interested in participating in this phase of these proceedings as a party of record by filing and receiving written comments must file a notice of intent to do so by December 15, 1992. We will issue a service list of the new parties of record shortly thereafter. Comments and replies must be served on all parties on the service list. Comments are due on December 31, 1992. Replies are due on February 1, 1993.

ADDRESSES: Send notices of intent to participate and pleadings referring to Finance Docket Nos. 28905 (Sub-No. 22) and 29430 (Sub-No. 20) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660 [TDD for the hearing impaired: (202) 927–5721].

Decided: November 30, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–29337 Filed 12–2–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 14, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 14, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 16th day of November 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Abbott & Co (wkrs)	Iberia, OH	11/16/92	11/02/92	27,990	Power supply cords.
Reggio Fashions (wkrs)	Shenandoah, PA	11/16/92	11/05/92	27,991	Ladies' dresses.
Airco Distributor Gases (wkrs)	Acton, MA	11/16/92	11/05/92	27,992	Acetylene gas.
Rogers Corp, Circuit Group (Co)	Chandler, AZ	11/16/92	11/06/92	27,993	Flexible circuits.
J&R Drilling Co (Co)	Corpus Christi, TX	11/16/92	11/05/92	27,994	Oil and gas.
Eastland Woolen (wkrs)	Corinna, ME	11/16/92	11/02/92	27,995	Textile material.
Striar Textile Mill (wkrs)	Orono, ME	11/16/92	11/02/92	27,996	Wool fiber.
Texaco Exploration & Production (wkrs)	New Orleans, LA	11/16/92	11/05/92	27,997	Oil and gas.
Petrorep, Inc (C)	Houston, TX	11/16/92	10/19/92	27,998	Oil and gas by-products.
Medford Corp (IWA)	Medford, OR	11/16/92	11/05/92	27,999	Plywood.
Garfield Sportswear, Inc (ILGWU)	Garfield, NJ	11/16/92	10/29/92	28,000	Ladies' suit jackets.
Q and T Coat, Inc (ILGWU)	Paterson, NJ	11/16/92	10/29/92	28,001	Ladies' coats.
Kabba Dress (ILGWU)	Nutley, NJ	11/16/92	10/29/92	28,002	Ladies' formal wear
RCR Sportswear Co (ILGWU)	Passaic, NJ	11/16/92	10/29/92	28,003	Ladies' coats.
Sabrina Coat (ILGWU)	Paterson, NJ	11/16/92	10/29/92	28,004	Ladies' wool coats.

APPENDIX—Continued

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Casual Coat Co., Inc (ILGWU)	Paterson, NJ	11/16/92	10/29/92	28,005	Ladies' wool coats.
Arcadia Fashions (ILGWU)	Paterson, NJ	11/16/92	10/29/92	28,006	Womens' coats.
N & R Fashions (ILGWU)	Paterson, NJ	11/16/92	10/29/92	28,007	Ladies' coats.
Dabri Fashions (wkrs)	Passaic, NJ	11/16/92	10/29/92	28,008	Women's jackets.
G.M. Coat Company (ILGWU)	Paterson, NJ	11/16/92	10/29/92	28,009	Ladies' wool coats.
Paxar American Silk Label (wkrs)	Troy, PA	11/16/92	11/02/92	28,010	Garment labels.
Oil Industry Engineering, Inc (wkrs)	Tomball, TX	11/16/92	10/28/92	28,011	Oil and gas.
Komatsu-Dresser Co (UAW)	Broadview, IL	11/16/92	11/02/92	28,012	Tractors and loaders services.
Amoco Corp (wkrs)	Houston, TX	11/16/92	10/30/92	28,013	Oil and gas.
Cricketeer Manufacturing (Re-Open) (ACTWU)	Harrodsburg, KY			27,129	Men's suits.
Joseph & Feiss Co (Re-Open) (ACTWU)	Cleveland, OH,			27,130	Men's suits.

[FR Doc. 92–29300 Filed 12–2–92; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–27,533]

Proctor Products, Bourbon, MO; Negative Determination Regarding Application for Reconsideration

By an application dated November 9, 1992, the Amalgamated Clothing and Textile Workers Union (ACTWU) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on September 23, 1992 and published in the **Federal Register** on October 6, 1992 (57 FR 46048).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that Proctor's workers should be certified for TAA since 98 percent of Proctor's production went to Brown Shoe whose workers are already certified for TAA.

The investigation file shows that Proctor Products, an independent firm, produced shoe components (shoe counters and heel covers) for Brown Shoe. Brown Shoe produces shoes and is Proctor's predominant customer.

The investigation files show that Proctor Products and Brown Shoe are independent of each other and produce different products. Proctor Products produces shoe counters and heel covers while Brown Shoe produces shoes. Accordingly, the claim that 98 percent of Proctor's production of shoe components is sold to Brown Shoe would not form a basis for a worker group certification.

Imports of finished articles (shoes) cannot be considered like or directly competitive with their component parts (shoe counters and heel covers). Only increased imports of articles that are like or directly competitive with those produced at the workers' firm (shoe counters and heel covers) can be considered as contributing importantly to worker separations and declines in sales or production.

The investigation files show that worker separations occurred at Proctor Products because Brown She decided to produce their own shoe counters to keep their factories open.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of November 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 92–29299 Filed 12–2–92; 8:45 am]
BILLING CODE 4510–30–M

Atlas Bradford a/k/a Grant TFW, Inc., Houston, TX, et al.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the Matter of Atlas Bradford a/k/a Grant TFW, Inc., TA–W–27,398 Houston, TX, TA–W–27,398A OK; TA–W–27,398B LA; TA–W–27,398C TX

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification on September 11, 1992, applicable to all workers of Atlas Bradford in Houston, Texas. The notice was published in the **Federal Register** on October 6, 1992 (57 FR 46048). The certification was amended on October 7, 1992 to include workers in Louisiana, Oklahoma and other locations in Texas. The amended notice was published in the **Federal Register** on October 23, 1992 (57 FR 48047).

At the request of the State Agency the Department reviewed the certification for workers of Atlas Bradford in Houston, Texas. The investigation findings show that Grant TFW, Inc., purchased Atlas Bradford in March 1992 and is a successor-in-interest firm. Grant TFW, Inc., experienced worker separations in 1992 and produces the same product as Atlas Bradford and to the same customer base.

Wages after March 1992 for the Atlas Bradford workers were reported under the unemployment insurance (UI) tax records for Grant TFW, Inc. Prior to March 1992 the Atlas Bradford wages were reported under the UI account for the Baroid Corporation.

Accordingly, the Department is amending the certification to show the correct worker group.

The intent of the Department's certification is to include all workers of Atlas Bradford and Grant TFW, Inc., in Texas, Oklahoma and Louisiana who were adversely affected by increased imports of oilfield tubing and casing.

The amended notice applicable to TA–W–27,398 is hereby issued as follows:

All workers to Atlas Bradford, a/k/a Grant TFW, Inc., in Houston, Texas and operating at various other locations in Texas and at various locations in Oklahoma and Louisiana who became totally or partially separated from employment on or after June 11, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this November 25, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–29305 Filed 12–2–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,129; TA–W–27,130]

Cricketeer Manufacturing Co., Harrodsburg, KY; Joseph & Feiss Co., Cleveland, OH; Revised Determination on Reopening

On November 13, 1992, the Department, at the request of the Amalgamated Clothing Workers Union reopened its investigation for workers and former workers of the subject firms. The initial investigation resulted in a negative determination on June 18, 1992 because the increased import criterion and the "contributed importantly" test of the Group Eligibility Requirements to the Trade Act were not met. The notice was published in the **Federal Register** on June 30, 1992 (57 FR 29100).

The Department also denied the petition on administrative reconsideration. On reconsideration the Department acknowledged that the union was correct in its contention that the workers met the increased import criterion; however, the Department indicated that the "contributed importantly" test still was not met. The notice was published in the **Federal Register** on August 6, 1992 (58 FR 33973).

Cricketeer Manufacturing Company and Joseph & Feiss Company are both wholly owned subsidiaries of International Fashions Apparel Corporation. Both plants produce men's tailored suits and sportcoats.

Further review of the customer survey revealed increased imports of men's tailored suits and a subsequent survey revealed that one customer incorrectly reported their import purchases of sportcoats and tailored suits. These findings permit the "contributed importantly" test to be met for workers of the subject firms.

Both Cricketeer and Joseph & Feiss in Cleveland had decreased sales and production and employment in 1991 compared to 1990 and in the first quarter of 1992 compared to the same quarter in 1991.

U.S. aggregate imports of men's and boys' dress and sport coats increased in quantity and value in 1991 compared to 1990 and increased absolutely in the twelve months ending in June 1992.

Workers at Cricketeer Manufacturing Company in Harrodsburg, Kentucky were certified earlier under TA–W–24,175. That certification expired on May 25, 1992.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with men's tailored suits and sportcoats produced by Cricketeer Manufacturing Company, Harrodsburg, Kentucky and Joseph & Feiss Company, Cleveland, Ohio contributed importantly to the decline in sales or production and to the total or partial separation of workers at the subject firms. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination: All workers and former workers of Cricketeer Manufacturing Company, Harrodsburg, Kentucky who became totally or partially separated from employment on or after May 25, 1992 and all workers and former workers of Joseph & Feiss Company, Cleveland, Ohio who became totally or partially separated from employment on or after April 1, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of November 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–29302 Filed 12–2–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,124, Computalog Wireline Services, Inc., Alice, TX; TA–W–27,125, Computalog Wireline Services, Inc., Seguin, TX; TA–W–27,125A, Computalog U.S.A., Inc., d/b/a Computalog Wireline Services, Inc. (hdqtrs.), Fort Worth, TX; TA–W–27,125B, Computalog Wireline Services, Inc.; all other locations in Texas (except Alice, Seguin and Ft. Worth)]

Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 9, 1992, applicable to all workers of Computalog Wireline Services, Inc., in Alice, Texas; Seguin, Texas and Fort Worth, Texas. The notice was published in the **Federal Register** on June 26, 1992 (57 FR 28706).

At the request of the company the Department reviewed the subject certification for workers of Computalog Wireline Services, Inc. New information from the company shows that Computalog Wireline Services, Inc., operates in the entire State of Texas and that worker separations occurred throughout Texas. Accordingly, the Department is amending the certification to include the entire State of Texas.

The intent of the Department's certification is to include all workers of Computalog Wireline Services, Inc., in the State of Texas who were adversely affected by increased imports of crude oil.

The amended notice applicable to TA–W–27,124 and TA–W–27,125 is hereby issued as follows:

All workers of Computalog Wireline Services, Inc., in Alice, Seguin and Fort Worth, Texas and operating at other locations in the State of Texas who became totally or partially separated from employment on or after March 30, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 24th day of November 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–29298 Filed 12–2–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,832; TA–W–27,833; TA–W–27,834]

Homco International, Inc., Enid, OK; Elk City, OK; Oklahoma City, OK; Termination of Investigations

Pursuant to section 221 of the Trade Act of 1974, investigations were initiated on September 21, 1992 in response to a worker petition which was filed on September 1, 1992 on behalf of workers at Homco International, Incorporated, operating out of Enid, Oklahoma (the subject to investigation TA–W–27,832); Elk City, Oklahoma (the subject of investigation TA–W–27,833); and Oklahoma City, Oklahoma (the subject of investigation TA–W–27,834).

On November 18, 1992, the Department of Labor amended the determination of investigation TA–W–27,571 assigned to Homco International, Incorporated, Wilburton, Oklahoma. The amended determination, a certification, was issued to include various other operating locations in the state of Oklahoma (TA–W–27,571A). This amended determination covers the workers at the sites of the subject investigations. Therefore, further investigation in this case would serve no purpose, and the investigations have been terminated.

Signed at Washington, DC, this 19th day of November 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-29301 Filed 12-2-92; 8:45 am]

BILLING CODE 4510-30-M

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of November 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increase of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,821; Preferred Tool & Die Co., Inc., Comstack Park, MI

TA-W-27,803; Green Veneer, Inc., Idanha, OR

TA-W-27,721; Gougler Industries, Inc., Kent, OH

TA-W-27,612; Garry Screw Machine, Inc., New Brunswick, NJ

TA-W-27,814; Weyerhaeuser, Snoqualmie, WA

TA-W-27,823; United Circuits, Inc., Dracut, MA

TA-W-27,694, TA-W-27,695, TA-W-27,696; Credence Systems Corp., Beaverton, OR, Fremont, CA, Billerica, MA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-27,781; Boe Moe & Sons, Inc., Port Angeles, WA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,915; Jim Thorpe Industries, Jim Thorpe, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,846; Pardner Well Service, Inc., Coahoma, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,806; Grid Systems Corp., Fremont, CA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,858; AT & T Mircoelectronics, Richmond, VA

U.S. imports of printed circuit boards decreased absolutely in the lastest twelve month period July 1991 through June 1992 compared to the previous twelve month period.

TA-W-27,835; GTE Telephone Operations, Silverton, OR

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,450 and TA-W-27,450A; Tekronix, Inc., Cax Center, Beaverton, OR and Tekronix, Inc., Test & Measurement Group Integrated Product Line Div., Beaverton, OR

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,837; Alcoa Technical Center, Alcoa Center, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,846; Pardner Well Service, Inc., Coahoma, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,912; Gee Wiz Div. of Winer Industries, Inc., Berwick, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,805; Workman Contracting, Inc., Mossyrock, WA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,747; Rocky Shoes & Boots aka William Brooks Shoe Co., Nelsonville, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,779; Hicks Construction, Inc., Bakersfield, CA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,848; Panhandle Eastern Pipe Line Co., Liberal, KS

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,786; Summit Distributors, Inc., Buffalo, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,736; AMP, Inc., Valley Forge, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,785; Design Associates, Inc., New Orleans, LA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,795; Louisiana Offshore, Ventures, Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,829; NERCO Minerals Co., Portland, OR

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-27,841; Grofton Apparel Manufacturing Co., Grafton, WV

A certification was issued covering all workers separated on or after September 17, 1991.

TA-W-27,7171; B C Service Co., Inc., Wickett, TX

A certification was issued covering all workers separated on or after August 14, 1991.

TA-W-27,819; Scotty Construction Co., Odessa, TX

A certification was issued covering all workers separated on or after August 31, 1991.

TA–W–27,465; Parker Hannifin O-Ring Div., McAllen, TX

A certification was issued covering all workers separated on or after June 23, 1991.

TA–W–27,861; Tejas Fluid, Inc., Corpus Christi, TX

A certification was issued covering all workers separated on or after August 4, 1991.

TA–W–27,894; Telemecanique, Inc., Westminster, MD

A certification was issued covering all workers separated on or after September 30, 1991.

TA–W–27,741; J-Trac, Inc., Mansfield, OH

A certification was issued covering all workers separated on or after July 1, 1991.

TA–W–27,574; Sutton Shirt Corp., Burkesville, KY

A certification was issued covering all workers separated on or after July 20, 1991.

TA–W–27,891; Red Eagle Resources Corp., Oklahoma City, OK & Operating at The Following Locations; A; Fairview, OK, B; El Reno, OK, C; Lindsay, OK

A certification was issued covering all workers separated on or after September 28, 1991.

TA–W–27,919; Hercules Offshore Corp., Houston, TX

A certification was issued covering all workers separated on or after October 14, 1991.

TA–W–27,719; Osborn Mfg Co., Henderson, KY

A certification was issued covering all workers separated on or after August 28, 1992 and before September 30, 1992.

TA–W–27,566; Eastman Teleco (Formerly Called Eastman Christensen) Gulf of Mexico Operations, Houston, TX

A certification was issued covering all workers separated on or after July 24, 1991.

TA–W–27,616; Sunbeam Outdoor Products, Baraboo, WI

A certification was issued covering all workers separated on or after August 4, 1991.

TA–W–27,855; Piedmont Industries, Inc., Greenville, SC

A certification was issued covering all workers separated on or after September 10, 1991.

TA–W–27,815; Petroleum Testing Services, Inc., Bakersfield, CA

A certification was issued covering all workers separated on or after August 31, 1991.

TA–W–27,802; Strategic Exploration, Inc., Houston, TX

A certification was issued covering all workers separated on or after August 31, 1991.

TA–W–27,733 and TA–W–27,734; Presidio Exploration, Inc., Englewood, CO and Dallas, TX

A certification was issued covering all workers separated on or after August 18, 1991.

TA–W–27,824 and TA–W–27,825; Genicom Corp., Herkimer, NY and St. Johnsville, NY

A certification was issued covering all workers separated on or after June 1, 1991.

TA–W–27,826; Joseph and Feiss, Utica, NY

A certification was issued covering all workers separated on or after September 16, 1991.

TA–W–27,890; Lenox Crystal Subsidiary of Lenox, Inc., Mt. Pleasant, PA.

A certification was issued covering all workers separated on or after September 25, 1991.

TA–W–27,789; The William Carter Co., Forsyth, GA

A certification was issued covering all workers separated on or after September 24, 1991.

TA–W–27,857; Forte' Cashmere Co., Inc., Woonsocket, RI

A certification was issued covering all workers separated on or after September 9, 1991.

I hereby certify that the aforementioned determinations were issued during the month of November 1992. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: November 23, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–29304 Filed 12–2–92; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the administrators for coal mine safety and health and metal and nonmetal mine safety and health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register**. Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons and a field investigation of the conditions at the mine. MSHA has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: November 24, 1992.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–89–180–C
FR Notice: 55 FR 1295
Petitioner: U.S. Steel Mining Company, Inc.
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to install high-voltage cables to power longwall equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–91–C
FR Notice: 55 FR 30538
Petitioner: Shamrock Coal Co., Inc.
Reg Affected: 30 CFR 75.800
Summary of Findings: Petitioner's proposal to use contactors for undervoltage protection instead of circuit breakers considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–93–C
FR Notice: 55 FR 30539
Petitioner: Shamrock Coal Co., Inc.
Reg Affected: 30 CFR 75.900
Summary of Findings: Petitioner's proposal to use contactors for undervoltage protection instead of circuit breakers considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–113–C
FR Notice: 55 FR 33787
Petitioner: U.S. Steel Mining Company, Inc.
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use 2400 volt cables to power longwall equipment inby the last open crosscut and within 150 feet of pillar workings considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–120–C
FR Notice: 55 FR 35380
Petitioner: AMAX Coal Company
Reg Affected: 30 CFR 77.500
Summary of Findings: Petitioner's proposal to handstone motor commutators while the motor is energized for the purpose of providing movement to the commutator to accomplish the stoning considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–165–C
FR Notice: 55 FR 49443
Petitioner: Cyprus Empire Coal Corporation
Reg Affected: 30 CFR 75.800
Summary of Findings: Petitioner's proposal to use contactors for high-voltage circuit protection instead of circuit breakers considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–33–C
FR Notice: 55 FR 20478
Petitioner: U.S. Steel Mining Company, Inc.
Reg Affected: 30 CFR 75.326
Summary of Findings: Petitioner's proposal to use belt air to ventilate the face and install a low-level carbon monoxide detection system in the belt entry considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–35–C
FR Notice: 55 FR 28889
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.305
Summary of Findings: Petitioner's proposal to monitor methane and oxygen from the surface considered acceptable alternate method. Granted with conditions for the return aircourses.

Docket No.: M–91–73–C
FR Notice: 55 FR 46208
Petitioner: Enlow Fork Mining Company
Reg Affected: 30 CFR 75.503
Summary of Findings: Petitioner's proposal to use 860 foot trailing cables on specific permissible electric face equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–78–C
FR Notice: 56 FR 50597
Petitioner: McElroy Coal Company
Reg Affected: 30 CFR 75.305
Summary of Findings: Petitioner's proposal to establish evaluation points to monitor hazardous conditions due to deteriorating roof conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–84–C
FR Notice: 55 FR 54898
Petitioner: The Ohio Valley Coal Company
Reg Affected: 30 CFR 75.326
Summary of Findings: Petitioner's proposal to install a low-level carbon monoxide monitoring system in all belt entries used as intake aircourses considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–94–C
FR Notice: 56 FR 58094
Petitioner: Future Mining Company
Reg Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous-duty methane and oxygen indicators on permissible three-wheel tractors with drag bottom buckets considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–97–C
FR Notice: 56 FR 58094
Petitioner: Mingo Logan Coal Company
Reg Affected: 30 CFR 75.326
Summary of Findings: Petitioner's proposal to use intake air from belt haulage entries to ventilate active working places and to install a low-level carbon monoxide detection system in all belt entries utilized as intake aircourses considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–101–C
FR Notice: 56 FR 58095
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use a high-voltage cable inby the last open crosscut to power a longwall shearing machine considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–102–C
FR Notice: 56 FR 64278
Petitioner: B & M Coal Company
Reg Affected: 30 CFR 75.326
Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places and to install a low-level carbon monoxide detection system in all belt entries utilized as intake aircourses considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–103–C
FR Notice: 56 FR 64278
Petitioner: B & M Coal Company
Reg Affected: 30 CFR 75.1103–4
Summary of Findings: Petitioner's proposal to use a carbon monoxide monitoring system to replace existing point-type sensors considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–104–C
FR Notice: 56 FR 64278
Petitioner: Island Creek Coal Company
Reg Affected: 30 CFR 75.213
Summary of Findings: Petitioner's proposal to remove loose roof bolts in areas where the gob or shale has weathered away from the roof bolt exposing the massive self-supporting limestone roof considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–110–C
FR Notice: 56 FR 65513
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.305
Summary of Findings: Petitioner's proposal to establish evaluation points to monitor hazardous conditions due to deteriorating roof considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–111–C
FR Notice: 56 FR 65513
Petitioner: Island Creek Coal Company
Reg Affected: 30 CFR 75.1103–4
Summary of Findings: Petitioner's proposal to use belt air to ventilate the working face and remove restrictions on the velocity of air in the belt entries and use a low-level carbon monoxide detection system to monitor the air in the belt entries considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–114–C
FR Notice: 56 FR 65514
Petitioner: Clinchfield Coal Company
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to use a carbon monoxide detection system to monitor electrical equipment instead of ventilating the equipment directly to the return considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–118–C
FR Notice: 57 FR 69
Petitioner: D L & B Coal Company
Reg Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to use a slope conveyance (gunboat) to transport persons as an alternate to safety catches considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–120–C
FR Notice: 57 FR 69

Petitioner: Brookside Coal Company
Reg Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to use a slope conveyance (gunboat) to transport persons as an alternate to safety catches considered acceptable alternate method. Granted with conditions.
Docket No.: M–91–121–C
FR Notice: 57 FR 69
Petitioner: Twentymile Coal Company
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to use a low-level carbon monoxide detection system to monitor electrical equipment instead of ventilating the equipment into the return considered acceptable alternate method. Granted for dry-type transformers and pumps with conditions.
Docket No.: M–91–122–C
FR Notice: 57 FR 70
Petitioner: Twentymile Coal Company
Reg Affected: 30 CFR 75.326
Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places and longwall retreat panels and install a low-level carbon monoxide detection system in all belt entries used as intake aircourses considered acceptable alternate method. Granted with conditions.
Docket No.: M–91–123–C
FR Notice: 57 FR 70
Petitioner: Twentymile Coal Company
Reg Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places and planned panels, and install a low-level carbon monoxide detection system in all belt entries used as intake aircourses considered acceptable alternative method. Granted with conditions.
Docket No.: M–91–125–C
FR Notice: 57 FR 70
Petitioner: Peak Mountain Coal Company
Reg Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use a hand-held continuous-duty methane and oxygen indicator instead of machine-mounted methane monitors on permissible three-wheel tractors with drag bottom buckets considered acceptable alternative method. Granted with conditions.
Docket No.: M–91–126–C
FR Notice: 57 FR 70
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to enclose electric equipment in a monitored fireproof structure instead of ventilating the equipment to the return considered acceptable alternate method. Granted with conditions for the power centers and starter box unit located near block 140 and 141 main west entries.
Docket No.: M–91–127–C
FR Notice: 57 FR 70
Petitioner: Pyro Mining Company
Reg Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposals to amend its petition to consolidate and include the provisions of the Pyro No. 11 Mine, docket number M–86–38–C, and Pyro No. 9 Slope, William Station Mine, docket number M–86–134–C into Pyro No. 9 Wheatcroft Mine considered acceptable alternate method. Granted with conditions to allow a sensor location to be identified instead of a belt flight.
Docket No.: M–91–129–C
FR Notice: 57 FR 3220
Petitioner: Southern Ohio Coal Company
Reg Affected: 30 CFR 75.804(a)
Summary of Findings: Petitioner's proposal to use an internal ground check conductor smaller than No. 10 (A.W.G.) for the high-voltage longwall system considered acceptable alternate method. Granted with conditions.
Docket No.: M–91–132–C
FR Notice: 57 FR 3221
Petitioner: Gideon Coal Company
Reg Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous-duty methane and oxygen indicators instead of machine-mounted methane monitors on permissible three-wheel tractors with drag bottom buckets considered acceptable alternate method. Granted with conditions.
Docket No.: M–91–133–C
FR Notice: 57 FR 5491
Petitioner: Kerr-McGee Coal Corporation
Reg Affected: 30 CFR 75.503
Summary of Findings: Petitioner's proposal to replace two Fletcher single-boom roofbolters, Model No. DR–13 with Model No. CDR–13 having the same horsepower rating and the same size trail cable considered acceptable alternate method. Granted with conditions.
Docket No.: M–92–3–C
FR Notice: 57 FR 5491
Petitioner: Windsor Coal Company
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to enclose electrical equipment in a monitored fireproof structure instead of ventilating to the return aircourse considered acceptable alternate method. Granted with conditions for the affected pumps, rectifiers, and dry-type transformers.
Docket No.: M–92–8–C
FR Notice: 57 FR 5492
Petitioner: Cyprus Emerald Resources Corporation
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage cables to power permissible longwall equipment considered acceptable alternate method. Granted with conditions.
Docket No.: M–92–11–C
FR Notice: 57 FR 7799
Petitioner: AMAX Coal Company
Reg Affected: 30 CFR 75.901(a)
Summary of Findings: Petitioner's proposal to use a portable diesel powered generator to supply electrical power to mobile mining equipment when such mining equipment is being moved from one area of the mine to another considered acceptable alternate method. Granted with conditions.
Docket No.: M–92–13–C
FR Notice: 57 FR 10044
Petitioner: Mingo Logan Coal Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage cables to power longwall face equipment considered acceptable alternate method. Granted with conditions.
Docket No.: M–92–15–C
FR Notice: 57 FR 10044
Petitioner: G & C Coal Company
Reg Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use a hand-held continuous oxygen and methane monitor instead of machine-mounted methane monitors on permissible three-wheel tractors with drag bottom buckets considered acceptable alternate method. Granted with conditions.
Docket No.: M–92–16–C
FR Notice: 57 FR 10044
Petitioner: Mountain Valley Management, T/A Bucket Coal Company
Reg Affected: 30 CFR 75.301
Summary of Findings: Petitioner's proposal to use a hand-held continuous oxygen and methane monitor instead of machine-mounted methane monitors on permissible three-wheel tractors with drag bottom buckets considered acceptable alternate method. Granted with conditions.
Docket No.: M–92–17–C
FR Notice: 57 FR 10044
Petitioner: Eastern Associated Coal Corporation
Reg Affected: 30 CFR 75.305

Summary of Findings: Petitioner's proposal to monitor ventilation in the longwall tailgate entry instead of traveling the return aircourse in its entirety considered acceptable alternate method. Granted with conditions.
Docket No.: M–92–22–C
FR Notice: 57 FR 11093
Petitioner: Valley Coal Company
Reg Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal to use a low-level carbon monoxide monitoring system in all belt entries where a monitoring system identifies a sensor location instead of in each belt flight considered acceptable alternate method. Granted with conditions.
Docket No: M–92–23–C
FR Notice: 57 FR 11093
Petitioner: Powderhorn Coal Company
Reg Affected: 30 CFR 75.305
Summary of Findings: Petitioner's proposal to establish evaluation points to monitor for hazardous conditions instead of traveling in its entirety due to hazardous roof conditions considered acceptable alternate method. Granted with conditions.
Docket No: M–92–24–C
FR Notice: 57 FR 11093
Petitioner: Brookside Coal Company
Reg Affected: 30 CFR 75.301
Summary of Findings: Petitioner's request that the minimum quantity of air reaching each working face be 1,500 cubic feet a minute (cfm), that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cfm, and that the minimum quantity of air reaching the intake end of a pillar line be 5,000 cfm considered acceptable alternate method. Granted with conditions.
Docket No: M–92–25–C
FR Notice: 57 FR 11093
Petitioner: Costain Coal Incorporated
Reg Affected: 30 CFR 75.305
Summary of Findings: Petitioner's proposal to establish evaluation points to monitor the quantity and quality of air entering and leaving the affected area considered acceptable alternate method. Granted with conditions.
Docket No: M–92–26–C
FR Notice: 57 FR 13762
Petitioner: Skyline Coal Company
Reg Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to use a slope conveyance (gunboat) without safety catches to transport persons considered acceptable alternate method. Granted with conditions.
Docket No: M–92–28–C
FR Notice: 57 FR 13762
Petitioner: Paramont Coal Corporation
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to use a low-level carbon monoxide monitoring system in all belt entries used as intake aircourses to monitor the air at each belt drive and tailpiece considered acceptable alternate method. Granted with conditions.
Docket No: M–92–29–C
FR Notice: 57 FR 13762
Petitioner: Paramont Coal Corporation
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to use a carbon monoxide monitoring system in the belt entry splits of air instead of ventiliating directly into the return considered acceptable alternate method. Granted with conditions.
Docket No: M–92–31–C
FR Notice: 57 FR 13763
Petitioner: Peabody Coal Company
Reg Affected: 30 CFR 75.305
Summary of Findings: Petitioner's proposal to have a certified person monitor methane, oxygen, and the airflow at least once a week instead of traveling the return aircourse in its entirety considered acceptable alternate method. Granted with conditions.
Docket No: M–92–33–C
FR Notice: 57 FR 13763
Petitioner: Dominion Coal Company
Reg Affected: 30 CFR 75.1701
Summary of Findings: Petitioner's proposal to drill test holes when the working place approaches an abandoned area in the mine considered acceptable alternate method. Granted for some of petitioner's mines with conditions.
Docket No: M–92–37–C
FR Notice: 57 FR 13763
Petitioner: Island Creek Coal Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage cables to power longwall equipment considered acceptable alternate method. Granted with conditions.
Docket No: M–92–41–C
FR Notice: 57 FR 20302
Petitioner: Mountaineer Coal Company
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to use belt transformer air to ventilate the active working section in conjunction with a carbon monoxide monitoring system considered acceptable alternate method. Granted with conditions.
Docket No: M–92–42–C
FR Notice: 57 FR 20302
Petitioner: Mountaineer Coal Company
Reg Affected: 30 CFR 75.326
Summary of Findings: Petitioner's proposal to use belt air to ventilate the active working sections and a low-level carbon monoxide monitoring system to monitor air in the belt entries used as intake aircourses considered acceptable alternate method. Granted with conditions.
Docket No: M–92–43–C
FR Notice: 57 FR 20302
Petitioner: S & L Coal Company
Reg Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to use increased rope strength and a secondary safety rope on a slope conveyance (gunboat) to transport persons as an alternate to safety catches considered acceptable alternate method. Granted with conditions.
Docket No: M–92–50–C
FR Notice: 57 FR 22493
Petitioner: Jewel Smokeless Coal Corporation
Reg Affected: 30 CFR 77.214(a)
Summary of Findings: Petitioner's request that MSHA amend its October 20, 1981, Decision and Order for docket number M–81–53–C to eliminate the requirements for the construction of the bulkheads at the interconnections of the Young's Branch No. 15 and White Park No. 2 Mines considered acceptable alternate method. Granted with conditions for refuse pile I.D. No. 1211–VA5–1058–01.
Docket No: M–92–52–C
FR Notice: 57 FR 22494
Petitioner: Cyprus Emerald Resources Corporation
Reg Affected: 30 CFR 75.804(a)
Summary of Findings: Petitioner's proposal to install Anaconda-Brand Type SHD+GC, No. 16 AWG cables on longwall face equipment as an internal ground check conductor for the ground continuity circuit considered acceptable alternate method. Granted with conditions.
Docket No: M–92–57–C
FR Notice: 57 FR 22494
Petitioner: J R & L Coal Company
Reg Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to use increased rope strength and a secondary safety rope on a slope conveyance (gunboat) to transport persons as an alternate to safety catches considered acceptable alternate method. Granted with conditions.
Docket No: M–92–58–C
FR Notice: 57 FR 22494
Petitioner: Little Buck Coal Company
Reg Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to use increased rope strength and a secondary safety rope

on a slope conveyance (gunboat) to transport persons as an alternate to safety catches considered acceptable alternate method. Granted with conditions.
Docket No: M–92–60–C
FR Notice: 57 FR 24062
Petitioner: Mystic Energy Corporation
Reg Affected: 30 CFR 75.305
Summary of Findings: Petitioner's proposal to maintain a 36-inch ventilation pipe to surround the fall area for a length of about 350 feet and maintain a sufficient amount of air in the return and the pipe to ventilate the working sections due to unstable conditions inby and outby the roof fall considered acceptable alternate method. Granted with conditions.
Docket No: M–92–64–C
FR Notice: 57 FR 28882
Petitioner: Koch Carbon, Inc.
Reg Affected: 30 CFR 77.214(a)
Summary of Findings: Petitioner's proposal to construct a refuse fill in an area containing abandoned mine openings considered acceptable alternate method. Granted with conditions.
Docket No: M–92–70–C
FR Notice: 57 FR 32237
Petitioner: Westmoreland Coal Company
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's request that several provisions in MSHA's Decision and Order issued on October 30, 1990, for docket number M–89–115–C be amended to make the provisions consistent with an agreement in a previous petition for modification, docket number M–89–113–C using the same monoxide sensing system considered acceptable alternate method. Granted with conditions.
Docket No: M–92–85–C
FR Notice: 57 FR 34788
Petitioner: Westmoreland Coal Company
Reg Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's request that several provisions in MSHA's Decision and Order issued on October 30, 1990, for docket number M–89–115–C be amended to make the provisions consistent with an agreement in a previous petition for modification, docket number M–89–113–C using the same monoxide sensing system considered acceptable alternate method. Granted with conditions.
Docket No: M–91–7–M
FR Notice: 56 FR 37116
Petitioner: Moline Consumers Company
Reg Affected: 30 CFR 56.1107
Summary of Findings: Petitioner's proposal to use a gate with a padlock and electrical interlock on moving machine parts instead of guards considered acceptable alternate method. Granted with conditions.
Docket No: M–91–17–M
FR Notice: 56 FR 54898
Petitioner: ASARCO Inc.
Reg Affected: 30 CFR 57.14162
Summary of Findings: Petitioner's proposal to use a motor operator in the operators compartment or a swamper in the second to end car, both equipped with a cap lamp on single pushed or pulled mobile equipment instead of using trip lights considered acceptable alternate method. Granted with conditions.

[FR Doc. 92–29303 Filed 12–2–92; 8:45 am]
BILLING CODE 4510–43–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Design & Manufacturing Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: December 17, 1992—8:30 a.m. to 5:30 p.m.

Place: National Science Foundation, 1110 Vermont Ave, rm. 500–A, Washington, DC 20005.

Type of Meeting: Closed.

Contact Person: Dr. F. Hank Grant, Program Director, Operations Research & Production Systems, rm. 1128, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7676.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Operations Research & Production Systems Unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 30, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–29312 Filed 12–2–92; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison Co., Fermi 2 Nuclear Plant; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Enforcement, has issued a decision concerning a Petition filed by letters dated April 21 and 23, 1992 submitted by Edward A. Slavin, Jr. as counsel for Carolyn Larry (Petitioner). The Petition requested that "vigorous" enforcement action be taken against Detroit Edison Company including a substantial civil penalty, that Petitioner and her counsel be afforded an opportunity to be present during all enforcement, private, or "ex parte" phone conversations or meetings between NRC officials and DECo, that reasonable expenses incurred by Petitioner and her counsel relating to the enforcement action be paid by DECo as part of its civil penalty, and that an enforcement conference be reconvened with Detroit Edison Company so that Petitioner and her counsel can attend and participate. As basis for this request, Ms. Larry asserts that on April 17, 1992, the Court of Appeals for the Sixth Circuit upheld a finding by the Secretary of Labor that DECo intentionally discriminated against Ms. Larry for raising concerns about breaches of security for safeguards information at the licensee's Fermi 2 facility and deceived her about her rights with regard to filing her discrimination complaint with the Department of Labor.

By letters dated May 18 and 27, 1992, while denying the request for Petitioner to be present during all "ex parte" telephone conversations or meetings held between NRC officials and DECo, a response to the other requests concerning vigorous enforcement action and scheduling of an enforcement conference with DECo was deferred to allow further NRC consideration.

On October 23, 1992, a Notice of Violation was issued to Detroit Edison Company, citing DECo for a violation of 10 CFR 50.7 at Severity Level II, for the discriminatory action taken against Petitioner. Although a violation at this Severity Level would normally be assessed a civil penalty, in this case a civil penalty was not assessed due to the time that has expired since the violation occurred.

The Petition is granted with respect to the request for enforcement action against Detroit Edison Company, but is denied with respect to the issuance of a civil penalty and the scheduling of an

enforcement conference. The reasons for this denial are explained in the "Director's Decision Under 10 CFR 2.206" (DD–92–08) which is available for public inspection in the Commission's Public Document Room at 2120 L Street NW., Washington, DC 20555.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 25th day of November 1992.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 92–29296 Filed 12–2–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 72–8 (50–317/318)]

Baltimore Gas and Electric Co.; Issuance of Materials License SNM–2505; Calvert Cliffs Independent Spent Fuel Storage Installation at the Calvert Cliffs Nuclear Power Plant Site

The U.S. Nuclear Regulatory Commission (the Commission) has issued a materials license under the provisions of title 10 of the Code of Federal Regulations, part 72 (10 CFR part 72), to Baltimore Gas and Electric Company (BG&E or the licensee), authorizing receipt and storage of spent fuel in an independent spent fuel storage installation (ISFSI) located onsite at its Calvert Cliffs Nuclear Power Plant site, Calvert County, Maryland.

The function of the ISFSI is to provide interim storage for up to 2880 fuel assemblies from Calvert Cliffs Units 1 and 2. Twenty-four assemblies are stored in an inert atmosphere inside a stainless steel canister which provides confinement, shielding, criticality control and heat removal. Spent fuel loading and canister preparation takes place within the Calvert Cliffs reactor buildings. The canister is then transported inside a transfer cask to the onsite ISFSI where the canister is placed inside a concrete horizontal storage module (HSM) which provides additional shielding. Up to a total of 120 storage modules are authorized under the license. The license for an ISFSI under 10 CFR part 72 is issued for 20 years, but the licensee may seek to renew the license, if necessary, prior to its expiration.

The Commission's Office of Nuclear Material Safety and Safeguards (NMSS) has completed its environmental, safeguards, and safety reviews in support of the issuance of this license. The Commission authorized issuance of this license pursuant to § 2.764(c) of 10 CFR part 2.

Following receipt of the application filed December 21, 1989, a Notice of Proposed Action was published in the **Federal Register** on February 9, 1990 (55 FR 4742). BG&E relied on a topical report submitted by NUTECH Engineers, Inc., "Topical Report for the NUTECH Horizontal Modular Storage System for Irradiated Nuclear Fuel, NUHOMS–24P," Revision 1A, July 1989, and additional docketed supported and modifying submittals; and the NRC staff's "Safety Evaluation Report Related to the Topical Report for the NUTECH Horizontal Modular Storage System for Irradiated Nuclear Fuel Topical Report NUHOMS–24P, Submitted by NUTECH Engineers, Inc.," dated April 1989. The "Environmental Assessment (EA) Related to the Construction and Operation of the Calvert Cliffs Independent Spent Fuel Storage Installation" (dated March 1991), along with a Finding of No Significant Impact was issued and noticed in the **Federal Register** (56 FR 13196, dated March 29, 1991) in accordance with 10 CFR part 51. The scope of the environmental assessment included the construction and operation of an ISFSI on the Calvert Cliffs site, including impacts specifically derived from the NUTECH–24P system to be used.

The staff has completed its safety review of the Calvert Cliffs ISFSI site application and safety analysis report. The Calvert Cliffs safety analysis report, as supplemented, included confirmation by the applicant that: (a) No technical specification changes are required, under the Calvert Cliffs 10 CFR part 50 licenses to accommodate a 10 CFR part 72 license for onsite storage; (b) the joint operations of the reactors and the onsite ISFSI do not affect the safety margins of either one; and (c) onsite storage is an independent operation, as defined in 10 CFR part 72. The NRC staff's "Safety Evaluation Report for the Baltimore Gas and Electric Company's Safety Analysis Report for an Independent Spent Fuel Storage Installation" was completed in November 1992.

Materials License SNM–2505, the staff's Environmental Assessment, Safety Evaluation Report, and other documents related to this action are available for public inspection and for copying for a fee at the NRC Public Document Room, the Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room at the Calvert County Library, Fourth Street, Prince Frederick, Maryland, 20678.

Dated at Rockville, Maryland, this 25th day of November 1992.

For the Nuclear Regulatory Commission.

Charles J. Haughney,

Chief, Source Containment and Devices Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 92–29297 Filed 12–2–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Solicitation of Views

AGENCY: Executive Office of the President, Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Request for public comment in connection with an evaluation of the coding structure used to identity Government purchases for services in the Federal Procurement Data System (FPDS).

SUMMARY: Section 6 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 405 *et seq.* requires the Administrator for Federal Procurement Policy to provide and direct the activities of the FPDS in order to adequately collect, develop, and disseminate procurement data.

Executive departments and agencies are required to report the predominant purpose of the contract (i.e., what the Government is buying) for contract actions over $25,000. A four-digit code is used to identify the predominant product or services procured under a Government contract. The FPDS product codes are used to identify contract actions for supplies and equipment and service codes are used to identify actions for research and development, construction, and various other services. These codes are included in the FPDS Product and Service Code Manual.

The FPDS product codes are linked to the Federal Supply Classification codes (FSC) identified under the Federal Cataloging Program and no changes are contemplated to the current FSC coding structure.

Concerns have been expressed by data users that some of the services are not easily understood. In addition, some of the codes are not discrete, and are not used consistently by the reporting

agencies. Since the services are not defined, some users contend that the data may not accurately reflect what the Government is spending for services. An OFPP-led interagency task group has been organized to review the current FPDS coding structure for services to determine what improvements may be needed.

Specific comments are requested on improvements that may be needed to ensure that the services codes (1) are adequate to describe the services that are being procured by Federal agencies, (2) do not overlap or duplicate each other, and (3) are easily understood and used consistently among data users and the reporting agencies.

COMMENT DATE: Comments must be received on or before January 19, 1993.

ADDRESS: Comments should be submitted to Ms. Linda G. Williams, Deputy Associate Administrator, Office of Federal Procurement Policy, Office of Management and Budget, 725 17th Street, NW., room 9001, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda G. Williams, Deputy Associate Administrator, (202) 395–3302. Anyone wishing to obtain a copy of the FPDS Product and Service Code Manual may call or write the Federal Procurement Data Center, General Services Administration, 7th and D Streets, SW., room 5652, Washington, DC 20407. Telephone Number (202) 401–1529.

Dated: November 27, 1992.

Allan V. Burman,

Administrator.

[FR Doc. 92–29284 Filed 12–2–92; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31529; International Series Release No. 495; File No. SR–Amex–91–26]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing of Amendment to and Order Granting Partial Accelerated Approval of a Proposed Rule Change Relating to the Listing of Options on American Depositary Receipts

November 27, 1992.

I. Introduction

On October 8, 1991, and May 27, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("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, and Amendment No. 1 to the proposed rule change, to provide for the listing and trading of options on American Depositary Receipts ("ADRs") and preferred stock.[3] This order only approves those aspects of the proposed rule change that authorize the listing of options on ADRs where there is an effective surveillance sharing agreement in place between the Amex and the primary exchange on which the foreign security underlying the ADR is listed.[4]

The original proposed rule change was published for comment in Securities Exchange Act Release No. 29839 (October 18, 1991), 56 FR 55356 (October 25, 1991). No comment letters were received on the proposed rule change. Amendments Nos. 1 and 2 to the proposed rule change were published for comment in Securities Exchange Act Release No. 31117 (August 28, 1992), 57 FR 40703 (September 4, 1992). The Commission received no comments on these amendments.

II. Description

The proposal under consideration would authorize the Amex to list and trade options on ADRs where the underlying foreign security is subject to an effective surveillance sharing agreement and the ADR meets or exceeds Exchange's established uniform options listing standards. First, to be eligible for listing and continued trading the proposal requires that the Amex have effective surveillance sharing agreements in place with the foreign exchanges that serve as the primary markets for the foreign securities underlying the ADRs. Second, the initial listing standards would require that the ADRs underlying the Exchange-listed options have a "float" of 7,000,000 ADRs outstanding, 2,000 shareholders, trading volume of at least 2,400,000 over the prior twelve month period, and a minimum price of $7½ for a majority of the business days during the preceding six month period. Moreover, options on ADRs must meet or exceed the maintenance criteria for continued listing under the Amex rules. Those criteria include: the ADRs underlying Exchange-listed options must maintain a "float" of 6,300,000 ADRs; 1600 shareholders; trading volume of at least 1,800,000 over the prior twelve month period; and a minimum price of $5 on a majority of the business days during the preceding six month period.

In addition, the Exchange listing standards require that the ADR underlying an ADR option be registered and listed on a national securities exchange or traded through the facilities of a national securities association and be reported as a national market system security. The issuers of the ADRs also must be in compliance with any other applicable requirements of the Act. Additionally, the Amex will make reasonable inquiry to evaluate the securities underlying the ADRs to ensure that these securities are generally consistent with the above-noted listing requirements.

III. Discussion

The Commission finds that the portions of the proposed rule change related to the listing of options on certain ADRs where there is an effective surveillance sharing agreement in place is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5). Specifically, the Commission finds that allowing options to trade on ADRs, among other things, gives investors a better means to hedge their positions in the ADRs, as well as enhanced market timing opportunities.[5] Further, the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] The Amex amended the proposal on several occasions thereafter. Amendment No. 2 to the proposed rule change, submitted on August 21, 1992, amends the proposal to permit the listing of ADR options that meet Exchange listing standards where the Exchange has an effective surveillance sharing agreement with the exchanges that serve as the primary exchanges for the foreign securities underlying the ADR options. On September 18, 1992, the Amex submitted Amendment No. 3 to its proposal. This amendment imposed the options listing standards on the foreign securities underlying the ADRs and required the existence of Memoranda of Understanding between the Commission and the appropriate regulatory authorities of the countries in which the primary exchanges for the securities underlying the ADRs are located. This amendment, however, was withdrawn and replaced with Amendment No. 4 to the filing. In Amendment No. 4, the Amex represented that it will make reasonable inquiry to evaluate securities underlying ADRs to ensure that these securities are generally consistent with the requirements set forth in the Exchange's options listing Regulation, Division of Market Regulation, Commission, from Ellen T. Kander, Special Counsel, Derivatives Securities, Amex, dated October 27, 1992 ("October 27th Letter").

[4] The Amex also has requested approval to list options on certain ADRs where it does not have surveillance sharing agreements with the primary markets for the securities underlying these ADRs. The Commission is continuing to review this proposal and is not, at this time, approving the listing of options on ADRs overlying those stocks. In addition, the Commission is continuing to review the Exchange's proposal to list options on preferred stock.

[5] For example, if an investor wants to invest in ADRs but he does not have the sufficient cash available until a future date, he can purchase the ADR option now for less money and exercise the option to purchase the ADRs at a later date.

pricing of ADRs underlying an ADR option may become more efficient and market makers in these ADRs, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets. In sum, options on ADRs likely will engender the same benefits to investors and the market place that exist with respect to options on common stock.

The Commission also believes that it is appropriate to permit the Amex to list and trade options on certain ADRs given that the proposal includes specific provisions related to the protection of investors. First, the proposal requires that the ADRs must meet the Amex's uniform options listing standards in all respects. As described above, this would include the initial and maintenance criteria. These criteria ensure, among other things, that the underlying ADRs will maintain adequate price and float to prevent susceptibility to manipulation. Second, the Amex has represented that it will make a reasonable inquiry to evaluate securities underlying ADRs, to ensure that these securities are generally consistent with the requirements set forth in the Exchange's options listing standards.[6]

The Commission recognizes that, in some cases under the proposal, an ADR underlying an option could meet the options listing standards while the foreign security on which the ADR is based may not meet these standards in every respect. For example, in the case of ADRs overlying certain foreign securities, one ADR could represent several shares of a specific stock so that the price of the ADR will meet exchange listing standards even though the price of the foreign security may not meet the price standards because the market price of the foreign security is less than the Amex standard. The Commission believes, that requiring the Amex to review the securities underlying the ADRs to ensure that they are generally consistent with the Exchange's options listing standards, along with other market safeguards, will adequately protect investors from the possibility that an ADR option can be easily manipulated.[7]

Third, the proposal requires that the Amex have an effective surveillance sharing agreement in place with the primary exchange on which the security underlying the ADR trades. As a general matter, the Commission believes that the existence of an effective surveillance sharing agreement between an exchange proposing to list an equity option, such as options on ADRs, and the exchange trading the stock underlying the equity option is necessary to detect and deter market manipulation and other trading abuses.[8] In particular, the Commission notes that effective surveillance sharing agreements provide an important deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. These agreements are especially important in the context of derivative products based on foreign securities because they facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions. The Commission further believes that the ability to obtain relevant surveillance information, including, among other things, the identify of the ultimate purchasers and sellers of securities, is an essential and necessary component of an effective surveillance agreement.

In the context of ADRs, the Commission generally believes that the relevant underlying equity market is the primary market on which the security underlying the ADR trades. This is because the market for the security underlying the ADR generally is larger in comparison to the ADR market, both in terms of share volume and the value of trading. Thus, as a general matter, the market for the security underlying the ADR is the price-discovery market and, therefore, would be instrumental in engaging in manipulative or other abusive trading strategies in conjunction with transactions in the overlying ADR options market.[9] Further, because of the leverage provided by an option on an ADR, the Commission believes these requirements will help ensure the integrity of the marketplace.

In summary, the Commission believes the Amex will have the ability to surveil adequately trading in the ADR options market and the related equity market because the Amex's proposal requires that there be an effective surveillance agreement in place between the Amex and the primary market on which the security between the Amex and the primary market on which the security underlying the ADR trades.[10]

The Commission finds good cause for approving Amendment No. 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that this amendment will strengthen the regulatory requirements applicable to options on ADRs by serving to ensure that the markets for the security underlying the ADRs are not readily susceptible to manipulation. The Commission finds, therefore, that no new issues are raised by this amendment. Accordingly, the Commission believes it is consistent with sections 19(b)(2) and 6(b)(5) of the Act to approve Amendment No. 4 to the Amex's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 4 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the rule change between the Commission and any person, other than those that may be

[6] See October 27th Letter, *supra* note 4.

[7] For example, we would expect an Exchange to consider delisting an option on an ADR if the price and public float of the underlying security both did not meet trading or size maintenance standards, or if the security underlying the ADR failed to meet other standards that raised manipulative concerns.

[8] The Commission notes that the Amex, along with the other national securities exchanges and the National Association of Securities Dealers, the domestic markets on which the ADRs underlying the ADR options may trade, are members of the Intermarket Surveillance Group ("ISG"), which will provide for the exchange of necessary surveillance information concerning trading activity .n the ADR markets underlying ADR options. ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990.

[9] See also Securities Exchange Act Release No. 26653 (March 21, 1989), 54 FR 12705 (order approving the trading of options on the International Market Index ("IMI"), an index comprised of ADRs traded in the United States based on foreign securities). In this approval order, the Commission specifically required that there be effective surveillance sharing agreements in place between the Amex and the foreign exchanges on which the securities underlying the ADRs trade so that a substantial percentage of the Index was covered by effective surveillance sharing agreements. In particular, 78% of weight of the Index was covered by effective surveillance sharing agreements. The Commission further recommended that the Amex obtain effective surveillance sharing agreements with the exchanges on which the foreign securities underlying the ADRs, that comprised the remaining 22% of the weight of the Index, traded.

[10] Moreover, as noted above, *supra* note 8, the Amex, along with the other national securities exchanges and the NASD, the domestic markets on which the ADRs underlying the ADR options may trade, is a member of the ISG and would have access to surveillance information regarding trading in the ADR itself, as well as access to information on the security underlying the ADR pursuant to an effective surveillance agreement.

withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 24, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [11], that the portion of the proposed rule change (SR–Amex–91–26) related to the listing of options on ADRs where there is an effective surveillance sharing agreement in place between the Amex and the primary exchange on which the security underlying the ADR trades is approved, effective December 1, 1992.

Accordingly, the Exchange may submit listing certificates for ADR options on December 1, 1992 pursuant to Rule 12d1–3 under the Act and commence trading in the options according to the time parameters established in the Joint Options Listing Procedures Plan.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–29318 Filed 12–2–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31531; International Series Release No. 497; File No. SR–CBOE–91–34]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of Amendment to and Order Granting Partial Accelerated Approval of a Proposed Rule Change Relating to the Listing of Options on American Depositary Receipts

November 27, 1992.

I. Introduction

On October 4, 1991, and December 26, 1991, the Chicago Board Options Exchange ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), 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, and Amendment No. 1 to the proposed rule change, to provide for the listing and trading of options on American Depositary Receipts ("ADRs") and preferred stock.[3] This order only approves the proposed rule change with respect to options on ADRs where there is an effective surveillance sharing agreement in place between the CBOE and the primary exchange on which the foreign security underlying the ADR is listed, or if the Commission otherwise approves the listing without the agreement.[4] The Commission also is publishing this notice to solicit comments on Amendment No. 2 from interested persons.[5]

II. Description

The proposal under consideration would authorize the CBOE to list and trade options where the underlying foreign security is subject to an effective surveillance sharing agreement and the ADR meet or exceed the Exchange's established uniform options listing standards. First, to be eligible for listing and continued trading the proposal requires that the CBOE have effective surveillance sharing agreements in place with the foreign exchanges that serve as the primary markets for the foreign securities underlying the ADRs, unless the Commission otherwise approves the options' listing without an agreement. Second, the initial listing standards would require that the ADRs underlying Exchange-listed options have a "float" of 7,000,000 ADRs outstanding, 2,000 shareholders, trading volume of at least, 2,400,000 over the prior twelve month period, and a minimum price of $7½ for a majority of the business days during the preceding six month period. Moreover, options on ADRs must meet or exceed the maintenance criteria for continued listing under the CBOE rules. Those criteria include: the ADRs underlying Exchange-listed options must maintain a "float" of 6,300,000 ADRs; 1600 shareholders; trading volume of at least 2,400,000 over the prior twelve month period; and a minimum price of $5 on a majority of the business days during the preceding six month period.

In addition, the initial listing standards require that the ADR underlying an ADR option be registered and listed on a national securities exchange or traded through the facilities of a national securities association and be reported as a national market system security. The issuers of the ADRs also must be in compliance with any other applicable requirements of the Act. Additionally, the CBOE will make reasonable inquiry to evaluate the securities underlying the ADRs to ensure that these securities are generally consistent with the above-noted listing requirements.

III. Discussion

The Commission finds that the portions of the proposed rule change related to the listing of options on certain ADRs where there is an effective surveillance sharing agreement in place is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[6] Specifically, the Commission finds that allowing options to trade on ADRs, among other things, gives investors a better means to hedge their positions in the ADRs, as well as enhanced market timing opportunities.[7] Further, the pricing of ADRs underlying an ADR option may become more efficient and market makers in these ADRs, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets. In sum, options on ADRs likely will engender the same benefits to investors and the market

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[11] 15 U.S.C. 78s(b) (1988).

[12] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240 19b–4 (1992).

[3] The CBOE submitted Amendment No. 2 to the proposed rule change on November 2, 1992. This amendment proposes additional requirements for the listing of options on ADRs. Specifically, Amendment No. 2 requires that the Exchange must have effective surveillance sharing agreements in place with the exchanges that serve as the primary exchanges for the foreign securities underlying the ADRs, unless the Commission otherwise approves the listing of ADR options without the existence of a surveillance sharing agreement. In Amendment No. 2, the CBOE also represented that it will make reasonable inquiry to evaluate securities underlying ADRs to ensure that these securities are generally consistent with the requirements set forth in the Exchange's options listing standards.

[4] The CBOE also has requested approval to list options on certain ADRs where it does not have effective surveillance sharing agreements in place with the primary markets for the securities underlying these ADRs. See file Nos. SR–CBOE–92–8, 92–15 (with respect only to ADRs on Mexican stocks), and 92–16. The Commission is continuing to review these proposals and is not, at this time, approving the listing of options on ADRs overlying those stocks.

[5] The proposal was noticed for comment in Securities Exchange Act Release No. 29839 (October 18, 1991), 56 FR 55356. No comment letters were received on the proposed rule change as originally submitted. The Commission is continuing to review the Exchange's proposal to list options on preferred stock.

[6] The Commission notes that in file SR–CBOE–92–15 the CBOE requested approval to trade options on seven specific ADRs, five of which are covered by effective surveillance sharing agreements and two which are not. Because approval of the current CBOE proposal (SR–CBOE–91–34) will permit the trading of the five ADRs noted above it is not necessary for the Commission to separately approve the trading of options on these ADRs.

[7] For example, if an investor wants to invest in ADRs but does not have sufficient cash available until a future date, he can purchase an ADR option now for less money and exercise the option to purchase the ARDs at a later date.

place that exist with respect to options on common stock.

The Commission also believes that it is appropriate to permit the CBOE to list and trade options on certain ADRs given that the proposal includes specific provisions related to the protection of investors. First, the proposal requires that the ADRs must meet the CBOE's uniform options listing standards in all respects. As described above, this would include the initial and maintenance criteria. These criteria ensure, among other things, that the underlying ADRs will maintain adequate price and float to prevent the ADR options from being readily susceptible to manipulation. Second, the CBOE has represented that it will make a reasonable inquiry to evaluate securities underlying ADRs, to ensure that these securities are generally consistent with the requirements set forth in the Exchange's options listing standards.

The Commission recognizes that in some cases under the proposal, an ADR underlying an option could meet the options listing standards while the foreign security on which the ADR is based may not meet these standards in every respect. For example, in the case of ADRs overlying certain foreign securities, one ADR could represent several shares of a specific stock so that the price of the ADR will meet exchange listing standards even though the market price of the foreign security is less than the CBOE standard. The Commission believes, however, that requiring the CBOE to review the securities underlying the ADRs to ensure that they are generally consistent with the Exchange's options listing standards, along with other market safeguards, will adequately protect investors from the possibility that an ADR option can be easily manipulated.[8]

Third, the proposal requires that the CBOE have an effective surveillance sharing agreement in place with the primary exchange on which the security underlying the ADR trades, unless the Commission otherwise approves the listing of ADR options without the existence of a surveillance sharing agreement. As a general matter, the Commission believes that the existence of an effective surveillance sharing agreement between an exchange proposing to list an equity option, such as options on ADRs, and the exchange trading the stock underlying the equity option is necessary to detect and deter market manipulation and other trading abuses.[9] In particular, the Commission notes that effective surveillance sharing agreements provide an important deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. These agreements are especially important in the context of derivative products based on foreign securities because they facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions. The Commission further believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of an effective surveillance sharing agreement.

In the context of ADRs, the Commission generally believes that the relevant underlying equity market is the primary market on which the security underlying the ADR trades. This is because the market for the security underlying the ADR generally is larger in comparison to the ADR market, both in terms of share volume and the value of trading. Thus, as a general matter, the market for the security underlying the ADR is the price-discovery market and, therefore, would be instrumental in engaging in manipulative or other abusive trading strategies in conjunction with transactions in the overlying ADR options market.[10] Further, because of the leverage provided by an option on an ADR, the Commission believes these requirements will ensure the integrity of the marketplace.

In summary, the Commission believes the CBOE will have the ability to surveil adequately trading in the ADR option market and the related equity market because the CBOE's proposal requires that there be an effective surveillance sharing agreement in place between the CBOE and the primary market on which the security underlying the ADR trades.[11]

The Commission finds good cause for approving Amendment No. 2 to file CBOE–91–34 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. First, the provisions in Amendment No. 2 regarding the application of the options listing standards to the ADRs and the requirement that there be an effective surveillance sharing agreement in place between the CBOE and the primary market for the security underlying the ADR is identical to a proposed rule change submitted by the Amex that was subject to the full notice and comment period.[12] The Commission received no comments on the Amex's proposal. Accordingly, the Commission believes it is not necessary to separately notice the CBOE's proposal for comment. Second, with respect to the provisions in Amendment No. 2 requiring the CBOE to a make reasonable inquiry to evaluate securities underlying ADRs to ensure that these securities are generally consistent with the requirements set forth in the Exchange's options listing standards, the Commission believes that these provisions will strengthen the regulatory requirements applicable to options on ADRs by serving to ensure that the markets for the security underlying the ADRs are not readily susceptible to manipulation. The Commission finds, therefore, that no new issues are raised by this amendment. Accordingly, the Commission believes it is consistent with sections 19(b)(2) and 6(b)(5) of the Act to approve Amendment No. 2 to the

[8] For example, we would expect an Exchange to consider delisting an option on an ADR if the price and public float of the underlying security did not meet trading or size maintenance standards, or if the security underlying the ADR failed to meet other standards that raised manipulative concerns.

[9] The Commission notes that the CBOE, along with the other national securities exchanges and the National Association of Securities Dealers ("NASD"), the domestic markets on which the ADRs underlying the ADR options may trade, are members of the Intermarket Surveillance Group ("ISG"), which will provide for the exchange of necessary surveillance information concerning trading activity in the ADR markets underlying ADR options. ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigate information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990.

[10] See also Securities Exchange Act Release No. 26653 (March 21, 1989), 54 FR 12705 (order approving the trading of options on the International Market Index ("IMI"), an index comprised of ADRs traded in the United States based on foreign securities). In this approval order, the Commission specifically required that there be effective surveillance sharing agreements in place between the American Stock Exchange ("Amex") and the foreign exchanges on which the securities underlying the ADRs trade so that a substantial percentage of the Index was covered by effective surveillance sharing agreements. In particular "88% of the weight of the Index was covered by effective surveillance sharing agreements. For the remaining 22% of the Index, the Commission further recommended that the Amex obtain effective surveillance agreements with the exchanges on which the foreign securities underlying the ADRs trade.

[11] Moreover, as noted above, the CBOE, along with the other national securities exchanges and the NASD, the domestic markets on which the ADRs underlying the ADR options may trade, is a member of the ISG and would have access to surveillance information regarding trading in the ADR itself, in addition to surveillance information on the security underlying the ADR pursuant to an effective surveillance sharing agreement.

[12] See Securities Exchange Act Release No 31117 (August 28, 1992), 57 FR 40703

CBOE's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 24, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[13] that the portion of the proposed rule change (SR–CBOE–91–34) related to the listing of options on ADRs where there is an effective surveillance sharing agreement in place between the CBOE and the primary exchange on which the security underlying the ADR trades is approved, effective December 1, 1992. Accordingly, the Exchange may submit listing certificates for ADR options on December 1, 1992 pursuant to Rule 12d1–3 under the Act and commence trading in the options according to the time parameters established in the Joint Options Listing Procedures Plan.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–29315 Filed 12–2–92; 8:45 am]

BILLING CODE 8010–01–M

[13] 15 U.S.C. 78s(b) (1988).

[14] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–31498; File No. SR–GSCC–92–13]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Facilitating the Collection of Fees for the Public Securities Association

November 23, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 20, 1992, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR–GSCC–92–13) as described in Items I, II, and III below, which Items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend GSCC's rules by: (1) Adding the term "PSA" to Rule 1 and defining the term to mean the Public Securities Association ("PSA"); (2) renumbering present Rule 26 as Rule 25; (3) adding new Rule 26 to allow GSCC to collect fees for the PSA; and (4) revising Rule 29 to allow for the release of clearing data to facilitate the collection of fees for the PSA.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis, for, the Proposed Rule Change

The purpose of the proposed rule change is to establish procedures that will facilitate the collection of fees for the PSA. GSCC has been requested by the primary Dealers Committee of the PSA to assist in its collection of a volume sensitive fee to fund a portion of the PSA Government Division's expenses.

GSCC believes that it is in the best interests of its members, the vast majority of whom are also PSA members, for GSCC to help collect fees on behalf of PSA's Government Division. The PSA, which represents the interests of the entire Government securities industry, has indicated to GSCC the need to ensure a stable source of funding for its Government Division. The costs and administrative burden to GSCC of establishing and maintaining this collection process are expected to be minimal.

GSCC also notes that other SEC-regulated clearing agencies, specifically the Depository Trust Company and the MBS Clearing Corporation, currently help provide such a collection source on behalf of the PSA for its Money Market Committee and Mortgage-Backed Securities Division, respectively.

The key aspects of the PSA's funding proposal are as follows. Each month GSCC would collect $100,000 from dealer Comparison System members on a *pro rata* basis based on the par value of submitted trades (with a cap, initially to be $5,000, for any single member). The $100,000 aggregate amount would be subject to change by the PSA with sufficient prior notice to GSCC. For Netting System members, GSCC would add the appropriate amount to such members' funds-only settlement obligations on the same day of the month (the tenth business day) that those members are billed for GSCC fees. (Comparison-only members are billed for GSCC fees by mail by the fifth business day of the month, and must make their payment via Fedwire by the tenth business day.)

The funds collected would be remitted to the PSA at the end of each calendar quarter. The float earned by GSCC would be used to defray programming, administration, and other costs related to the collection of PSA fees. In addition, GSCC may require reimbursement from the PSA for certain of the programming and operational costs that it incurs prior to implementation of this funding plan. (In this regard, the GSCC Board has determined that it is appropriate for GSCC to absorb some of its initial programming, administrative, and other costs related to establishing this collection procedure).

The proposed arrangement would be subject to the following conditions and understandings:

(1) GSCC members would participate in this process on a voluntary basis;

[1] 15 U.S.C. 78s(b)(1).

(2) GSCC members could indicate that they do not wish to be assessed for PSA fees;

(3) GSCC members that do not indicate in advance to GSCC that they no longer wish to participate in this process would not be penalized by GSCC for not paying an assessed amount;

(4) GSCC members that participate in this process would be subject to a minimum monthly fee to be set by the PSA. Initially, this minimum monthly fee will be $100;

(5) GSCC would not guarantee remission to PSA of $100,000, or any other particular sum. Rather, it would remit only those funds actually received from members. (There would be a presumption that a shortfall in a funds-only payment made on the tenth business day of the month was due to nonpayment of the member's PSA fee, up to the amount of such fee); and

(6) PSA would agree both to maintain the confidentiality of the data provided by GSCC to it as well as any information on members' activity that might possibly be inferred as a result of this arrangement, and to not use the information provided by GSCC for any purpose other than the collection of fees.

The proposed rules changes are consistent with section 17A(b)(3)(A) of the Act and the rules and regulations thereunder in that they will facilitate the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule changes have not yet been solicited or received. Members will be notified of the rule filing, and comments will be solicited, by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to file number SR–GSCC–92–13 and should be submitted by December 24, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–29275 Filed 12–2–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31503; File No. SR–NSCC–92–12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Covering Open Short Positions that are Subject to the Honest Broker Procedures

November 23, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that October 13, 1992, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would add new Rule 21 to NSCC's rules that would ensure that open short positions in NSCC's Continuous Net Settlement System ("CNS") are covered by the release of pledged securities in the event an NSCC member activates the Depository Trust Company's ("DTC") Honest Broker procedures. Attached as Exhibit A is new NSCC Rule 21.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed rule change will ensure that Open CNS short positions are covered by the release of pledged securities in the event an NSCC member activates DTC's Honest Broker procedures.

Under DTC's Honest Broker procedures,[2] a troubled broker must submit to DTC a listing of the open delivery obligations that it would like to complete if shares are released by a pledgee bank. DTC's Honest Broker proposal provides that CNS obligations will take priority over other delivery obligations if the member submits instructions to DTC relating to CNS open short positions and shares are released. If the number does not include open CNS short positions in its instructions to DTC, they will not be covered.

It is in the interests of the National Clearance and Settlement System that

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 30948 (July 7, 1992), 57 FR 33533.

open short positions be covered by released shares. The rule change would ensure that this would occur as it authorizes NSCC to submit all such positions to DTC on the member's behalf. Since pledgee banks would be expecting payment for released shares, the proposed rule further provides that payments in respect of such deliveries would be made by NSCC to DTC, and would be included with their *pro rata* distribution to the pledgee banks, instead of being included with the member's other settlement credits pursuant to NSCC's Rule 12.

Since the proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions for which NSCC is responsible, it is consistent with section 17A of the Act and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Station, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to file number SR–92–12 and should be submitted by December 24, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Text of the Proposed Rule Change

Rule 21. Any member who activates The Depository Trust Company's Honest Broker procedures authorizes the Corporation to submit to The Depository Trust Company, on such member's behalf, for each open CNS short position, such data as is necessary to identify the Corporation as The Depository Trust Company participant account to which a redelivery of released pledged securities is to be made. Such authorization shall continue for the entire time period the member utilizes the Honest Broker procedure. Any CNS credit for a delivery which is completed through this procedure shall not be included with the member's other CNS daily credits as provided in Rule 12 but shall be payable by the Corporation to The Depository Trust Company on the day such delivery is completed.

[FR Doc. 92–29276 Filed 12–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31526; File No. SR–NYSE–92–35]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Rule 104.10(6) Pertaining to Specialists' Liquidating Transactions

November 27, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 25, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends a pilot program amending Exchange Rule 104.10(6) pertaining to specialists' liquidating transactions until January 29, 1993.

The Exchange requests accelerated approval of the proposed rule change to enable the pilot, which would otherwise expire on November 27, 1992, to continue on an uninterrupted basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange has proposed to amend Rule 104.10(6) on a permanent basis in File No. SR–NYSE–92–20. The proposed rule change, originally filed as a one-year pilot in SR–NYSE–91–07 and extended for three months in SR–NYSE–92–18, would amend Rule 104.10(6) to permit specialists to "reliquify" a dealer position by selling "long" on a zero-minus tick, or by purchasing to cover a "short" position on a zero-plus tick, without Floor Official approval. The proposed amendments also emphasize the specialist's affirmative role in providing stabilizing dealer participation to the marketplace where reliquification may be required to facilitate the maintenance of a fair and orderly market.

The Commission granted temporary approval for a one-year pilot [1] and

[1] See Securities Exchange Act Release No. 34–29626 (August 29, 1991), 56 FR 43953 (September 5, 1991) ("1991 Approval Order").

subsequently granted approval for a three-month extension of that pilot.[2] The current pilot is scheduled to expire on November 27, 1992. The Exchange is now seeking to extend the pilot until January 29, 1993 in order to give the Commission sufficient time to consider the Exchange's filing for permanent approval.

(b) Statutory Basis

The basis under the Act for this proposed rule change is Section 6(b)(5), which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change is consistent with these objectives because it enhances the specialists' ability to reliquify and re-enter the market and reinforce the specialists' obligation to participate during volatile or unusual market conditions in a manner that is counter to the trend of the market and which cushions price movements in the specialists' stocks.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–92–35 and should be submitted by December 24, 1992.

IV. Commission's Findings and Order Granting Temporary Accelerated Approval of Proposed Rule Change

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 sections 6(b)(5) and 11 of the Act.[3] The Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The Commission also believes that the proposal is consistent with section 11(b) of the Act and Rule 11b–1 thereunder,[4] which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.[5]

Under the current pilot program, a specialist may liquidate a position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick only if such transactions are reasonably necessary for the maintenance of a fair and orderly market and only if the specialist has obtained the prior approval of a Floor Official. Liquidations on a zero minus or a zero plus tick, which previously required Floor Official approval, can be effected under the pilot procedures without a Floor Official's approval, but continue to be subject to the restriction that they be effected only when reasonably necessary to maintain a fair and orderly market. In addition, the specialist must maintain a fair and orderly market during the liquidation.

After the liquidation, a specialist is required to re-enter the market on the opposite side of the market from the liquidating transaction to offset any imbalances between supply and demand. During any period of volatile or unusual market conditions resulting in a significant price movement in a specialist's specialty stock, the specialist's re-entry into the market must reflect, at a minimum, his or her usual level of dealer participation in the specialty stock. In addition, during such periods of volatile market conditions or unusual price movements, re-entry into the market following a series of transactions must reflect a significant level of dealer participation.

In our 1991 Approval Order,[6] the Commission asked the NYSE to submit a report setting forth the criteria developed by the Exchange to determine whether any reliquifications by specialists were necessary and appropriate in connection with fair and orderly markets. The Commission also asked the NYSE to provide information regarding the Exchange's monitoring of liquidation transactions effected by specialists on any destabilizing tick. In addition, the Commission asked the NYSE to provide the following information in its report: (1) A review of all liquidation transactions effected by specialists on any destabilizing ticks; (2) a review of liquidating transactions by specialists to determine that the required Floor Official approval was obtained where necessary; (3) and a review of liquidating transactions in light of dealer participation levels and re-entry into the market in terms of timing and support. In our 1992 Approval Order,[7] the Commission requested that the NYSE continue to monitor the pilot and update its report where appropriate. In particular, the Commission asked the NYSE to report any non-compliance with the rule and the action the NYSE has taken as a result of such non-compliance.

The NYSE submitted its reports to the Commission on July 20, 1992 and October 19, 1992 concerning the pilot program. As noted above, the NYSE concludes that the pilot program procedures appear to be working well in enabling specialists to reliquify appropriately to meet the needs of the market. The NYSE, therefore, concludes that specialists are using the Rule 104.10(6) pilot program in the manner that both the Commission and the Exchange envisioned. Accordingly, the Commission believes that it is reasonable to extend the pilot program for an additional two months to enable the Commission to fully review the NYSE reports and to enable the pilot to

[2] See Securities Exchange Act Release No. 34–31108 (August 27, 1992), 57 FR 40237 (September *, 1992) ("1992 Approval Order").

[3] 15 U.S.C. 78f and 78k (1988).

[4] 17 CFR 240.11b–1 (1991).

[5] See 1991 Approval Order, *supra* note 1 for a description of NYSE Rule 104.10(6) procedures and the Commission's rationale for approving those procedures on a pilot basis. The discussion in the aforementioned order is incorporated by reference into this order.

[6] See 1991 Approval Order, *supra* note 1.

[7] See 1992 Approval Order, *supra* note 2.

continue without interruption during the Commission's review.

In approving the NYSE's proposal on a pilot basis, the Commission recognized that it was important that the NYSE establish criteria for evaluating when specialist reliquifications were necessary. As noted above, the NYSE has submitted two reports to the Commission concerning the pilot program procedures. These reports have provided useful data for evaluating the effectiveness of the pilot program. Nevertheless, the Commission continues to believe that the articulation of objective, specific criteria that frame regulatory decisions and the dissemination of those criteria further the goals of the Act. During the next two months, the Commission expects to work closely with NYSE staff to determine if such criteria can be promulgated. The Commission expects that such criteria, albeit generally stated, must be a part of any permanent reliquification proposal.

During the next two months, the Commission expects the NYSE to continue to monitor compliance with the pilot program procedures and report any non-compliance with the rule and the action the NYSE has taken as a result of such non-compliance. The Commission requests that the NYSE submit its report on this subject by December 30, 1992.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[8]

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change is approved for a two month period ending on January 29, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-29314 Filed 12-2-92; 8:45 am]

BILLING CODE 8010-01-M

[8] No comments were received in connection with the proposed rule change which implemented these procedures. *See* 1991 Approval Order, *supra* note 1.

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-31528; International Series Release No. 494; File No. SR-NYSE-92-25]

Self-Regulatory Organizations; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Listing of Options on American Depositary Receipts and Preferred Stock

November 27, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 23, 1992, the New York Stock Exchange ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to provide for the listing and trading of options on American Depositary Receipts ("ADRs") and preferred stock that meet Exchange listing standards. The proposal also requires the Exchange to have an effective surveillance sharing agreement with the exchanges that serve as the primary exchanges for the foreign securities underlying the ADR options, unless the Commission otherwise approves the listing of ADR options without the existence of a surveillance sharing agreement.

The text of the proposal is available at the Office of the Secretary, NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NYSE proposes to provide for the listing and trading of options on ADRs and preferred stock that meet the Exchange's uniform options listing standards. The proposal also requires the NYSE to have an effective surveillance sharing agreement with the exchanges that serve as the primary exchanges for the foreign securities underlying the ADR options.[1]

With respect to options on ADRs, the proposal requires that, for the options to be eligible for listing and continued trading, the NYSE have effective surveillance sharing agreements in place with the foreign exchanges that serve as the primary markets for the foreign securities underlying the ADRs, unless the Commission otherwise approves the options' listing without an agreement. In addition, the initial listing standards would require that the ADRs underlying Exchange-listed options have a "float" of 7,000,000 ADRs outstanding, 2,000 shareholders, trading volume of at least 2,400,000 over the prior twelve-month period, and a minimum price of $7½ for a majority of the business days during the preceding six-month period. Moreover, options on ADRs must meet or exceed the maintenance criteria for continued listing under the NYSE rules. Those criteria include: The ADRs underlying Exchange-listed options must maintain a "float" of 6,300,000 ADRs; 1,600 shareholders; trading volume of at least 1,800,000 over the prior twelve-month period; and a minimum price of $5 on a majority of the business days during the preceding six-month period.

Furthermore, the Exchange listing standards require that the ADR underlying an ADR option be registered and listed on a national securities exchange or traded through the facilities of a national securities association and be reported as a national market system security. The issuers of the ADRs also must be in compliance with any applicable requirements of the Act. Additionally, the NYSE will make reasonable inquiry to evaluate the securities underlying the ADRs to ensure that these securities are generally consistent with the above-noted listing requirements.

The Exchange believes that the proposed rule change is consistent with

[1] Although the NYSE has requested approval to list and trade options on preferred stock, the Commission is continuing to review that proposal, and is not at this time approving the listing of options on preferred stock.

section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and the national market system, and protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the portion of the proposed rule change related to the listing of options on certain ADRs where there is an effective surveillance sharing agreement in place is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5). Specifically, the Commission finds that allowing options to trade on ADRs, among other things, gives investors a better means to hedge their positions in the ADRs, as well as enhanced market timing opportunities.[2] Further, the pricing of ADRs underlying an ADR option may become more efficient and market makers in these ADRs, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets. In sum, options on ADRs likely will engender the same benefits to investors and the market place that exist with respect to options on common stock.

The Commission also believes that it is appropriate to permit the NYSE to list and trade options on certain ADRs given that the proposal includes specific provisions related to the protection of investors. First, the proposal requires that the ADRs must meet the NYSE's uniform options listing standards in all respects. As described above, this would include the initial and maintenance criteria. These criteria ensure, among other things, that the underlying ADRs will maintain adequate price and float to prevent susceptibility to manipulation. Second, the NYSE has represented that it will make a reasonable inquiry to evaluate securities underlying ADRs, to ensure that these securities are generally consistent with the requirements set forth in the Exchange's options listing standards.[3]

The Commission recognizes that, in some cases under the proposal, an ADR underlying an option could meet the options listing standards while the foreign security on which the ADR is based may not meet these standards in every respect. For example, in the case of ADRs overlying certain foreign securities, one ADR could represent several shares of a specific stock so that the price of the ADR will meet exchange listing standards even though the price of the foreign security may not meet the price standards because the market price of the foreign security is less than the NYSE standard. The Commission believes, however, that requiring the NYSE to review the securities underlying the ADRs to ensure that they are generally consistent with the Exchange's options listing standards, along with other market safeguards, will adequately protect investors from the possibility that an ADR option can be easily manipulated.[4]

Third, the proposal requires that the NYSE have an effective surveillance sharing agreement in place with the primary exchange on which the security underlying the ADR trades, unless the Commission otherwise approves the listing of ADR options without the existence of a surveillance sharing agreement. As a general matter, the Commission believes that the existence of an effective surveillance sharing agreement between an exchange proposing to list an equity option, such as options on ADRs, and the exchange trading the stock underlying the equity option is necessary to detect and deter market manipulation and other trading abuses.[5] In particular, the Commission notes that effective surveillance sharing agreements provide an important deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. These agreements are especially important, in the context of derivative products based on foreign securities, because they facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions. The Commission further believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of an effective surveillance agreement.

In the context of ADRs, the Commission generally believes that the relevant underlying equity market is the primary market on which the security underlying the ADR trades. This is because the market for the security underlying the ADR generally is larger in comparison to the ADR market, both in terms of share volume and the value of trading. Thus, as a general matter, the market for the security underlying the ADR is the price-discovery market and, therefore, would be instrumental in engaging in manipulative or other abusive trading strategies in conjunction with transactions in the overlying ADR options market.[6] Further, because of the leverage provided by an option on the ADR, the Commission believes these requirements will ensure the integrity of the marketplace.

[2] For example, if an investor wants to invest in ADRs but he does not have the sufficient cash available until a future date, he can purchase the ADR option now for less money and exercise the option to purchase the ADRs at a later date.

[3] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Monica C. Michelizzi, Staff Attorney, dated November 11, 1992.

[4] For example, the Commission would expect an Exchange to consider delisting an option on an ADR if the price and public float of the underlying security both did not meet trading or size maintenance standards, or if the security underlying the ADR failed to meet other standards that raised manipulative concerns.

[5] The Commission notes that the NYSE, along with the other national securities exchanges and the National Association of Securities Dealers ("NASD"), the domestic markets on which the ADRs underlying the ADR options may trade, are members of the Intermarket Surveillance Group ("ISG"), which will provide for the exchange of necessary surveillance information concerning trading activity in the ADR markets underlying ADR options. ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second, Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990.

[6] See also Securities Exchange Act Release No. 26653 (March 21, 1989), 54 FR 12705 (order approving the trading of options on the International Market Index ("IMI"), an index comprised of ADRs traded in the United States based on foreign securities). In this approval order, the Commission specifically required effective surveillance sharing agreements to be in place with the exchanges on which the foreign securities underlying the ADRs that comprised 78% of weight of the Index traded. The Commission further recommended that effective surveillance sharing agreements be obtained with the exchanges on which the foreign securities underlying the ADRs that comprised the remaining 22% of the weight of the Index traded.

In summary, the Commission believes the NYSE will have the ability to surveil adequately trading in the ADR options market and the related equity market because the NYSE's proposal requires that there be an effective surveillance sharing agreement in place between the NYSE and the primary market on which the security underlying the ADR trades.[7]

The Commission finds good cause for approving the above-noted portions of the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** First, the provisions in the NYSE's proposal regarding the application of the options listing standards to the ADRs and the requirement that there be an effective surveillance sharing agreement in place between the NYSE and the primary market for the security underlying the ADR is identical to a proposed rule change submitted by the Amex that was subject to the full notice and comment period.[8] The Commission received no comments on the Amex's proposal. Accordingly, the Commission believes it is not necessary to separately notice the NYSE's proposal for comment. Second, with respect to the provisions in the NYSE's proposal requiring the NYSE to a make reasonable inquiry to evaluate securities underlying ADRs to ensure that these securities are generally consistent with the requirements set forth in the Exchange's options listing standards, the Commission believes that these provisions will strengthen the regulatory requirements applicable to options on ADRs by serving to ensure that the markets for the securities underlying the ADRs are not readily susceptible to manipulation. Accordingly, since the Commission finds that no new issues are raised by the current proposal, the Commission believes it is consistent with sections 19(b)(2) and 6(b)(5) of the Act to approve the NYSE's proposal to list and trade options on ADRs on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 24, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[9], that the portion of the proposed rule change (SR–NTSE–92–25) related to the listing of options on ADRs where there is an effective surveillance sharing agreement in place between the NYSE and the primary exchange on which the security underlying the ADR trades is approved, effective December 1, 1992. Accordingly, the Exchange may submit listing certificates for ADR options on December 1, 1992 pursuant to Rule 12d1–3 under the Act and commence trading in the options according to the time parameters established in the Joint Options Listing Procedures Plan.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–29319 Filed 12–2–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31499; File Nos. SR–OCC–92–28 and SR–ICC–92–5]

Self-Regulatory Organizations; The Options Clearing Corporation and the Intermarket Clearing Corporation; Notice of Proposed Rule Changes Relating to Cross-Margining

November 23, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on September 22, 1992, The Options Clearing Corporation ("OCC") and The Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The purpose of the proposed rule changes is to accommodate the establishment of cross-margining arrangements among OCC, ICC, and the Chicago Mercantile Exchange ("CME").

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of these rule changes is to provide for cross-margining arrangements between and among participating clearing organizations pursuant to a cross-margining agreement. Both OCC and ICC propose to enter into a Cross-Margining Agreement ("Agreement") with the CME to accommodate the existing bilateral cross-margining program between OCC and CME, the establishment of a bilateral cross-margining program between ICC and CME, and the establishment of a trilateral cross-margining program among OCC, ICC, and CME. The bilateral programs would involve the cross-margining of (i) certain OCC-cleared stock index options with certain CME-cleared stock index futures and commodity options on those stock index futures and (ii) certain ICC-cleared stock index futures and commodity options on those stock index futures with certain CME-cleared stock index futures and commodity options on those stock index futures. The

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[7] Moreover, as noted above, the NYSE, along with the other national securities exchanges and the NASD, the domestic markets on which the ADRs underlying the ADR options may trade, is a member of the ISG and would have access to surveillance information regarding trading in the ADR itself, in addition to surveillance information on the security underlying the ADR pursuant to an effective

[8] See Securities Exchange Act Release No. 31117 (August 28, 1992), 57 FR 40703.

[9] 15 U.S.C. 78s(b) (1988).

[10] 17 CFR 200.30–3(a) (12)(1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

programs would include positions carried in both proprietary and non-proprietary X–M Accounts. The trilateral program would involve the cross-margining of certain OCC-cleared stock index options, certain ICC-cleared stock index futures and commodity options on those stock index futures, and certain CME-cleared stock index futures and commodity The contracts that would be eligible for cross-margining under these options on those stock index futures carried in proprietary or non-proprietary X–M Accounts. The contracts that would be eligible for cross-margining under these programs are specified in Exhibit A to the Agreement.[2] The extension of cross-margining to the additional bilateral program as well as the trilateral program will expand the universe of available hedge positions and thereby will encourage wider participation in cross-margining and should potentially reduce the exposure of the clearing system in the event of a clearing member default.

The Cross-Margining Agreement

The cross-margining programs between ICC and CME and among OCC, ICC, and CME would operate in basically the same way as the existing OCC–CME program.[3] The Agreement is based on the existing Amended and Restated Cross-Margining Agreement ("Amended Agreement") between OCC and CME with modifications as necessary to accommodate cross-margining with an additional Participating Commodity Clearing Organization ("CCO"). Accordingly, this filing will discuss the modifications made to the Amended Agreement to accommodate the ICC–CME bilateral and the OCC–ICC–CME trilateral programs. Section 1 of the Agreement includes certain additional definitions applicable to the proposed programs. The definition of "Affiliate" as proposed in Amendment No. 3 to File No. SR–OCC–90–2[4] is used in the Agreement.[5] The term Set of X–M accounts has been substituted for the term Pair of X–M Accounts in order to accommodate both trilateral and bilateral cross-margining programs. The Agreement would also define a Carrying Clearing Organization as any Clearing Organization ("CO") that carries one of a particular Set of X–M Accounts. The term reflects that under the Agreement a Set of X–M Accounts might be carried by either all three or only two Clearing Organizations.

Revisions to other definitions are made in the Agreement. The definition of a Joint Clearing Member has been revised to mean a Clearing Member of each Carrying Clearing Organization, and the term Affiliated Clearing Members now refers to two Clearing Members that are Affiliates of one another, one or the other of which is a Clearing Member of each Carrying Clearing Organization.

Section 2 of the Agreement provides that, subject to the approval of the Carrying Clearing Organizations, Joint Clearing Members and Pairs of Affiliated Clearing Members may establish one Set of Proprietary X–M Accounts and one Set of Non-Proprietary X–M Accounts. That section allows each Set of X–M Accounts to consist of either two or three accounts and sets forth descriptions of such accounts. The forms of a Joint Clearing Member's Proprietary X–M Account Agreement and of a Pair of Affiliated Clearing Members Proprietary X–M Account Agreement and the forms of a Joint Clearing Member Non-Proprietary X–M Account Agreement and of a Pair of Affiliated Clearing Members Non-Proprietary X–M Account Agreement will be prescribed by the Clearing Organizations. For ease in processing the Account Agreements, they would no longer be attached as Exhibits to the Agreement.[6] The basic purpose of the Account Agreements is unchanged from the purpose in the OCC–CME program in that they will provide that the Clearing Organizations will have a lien on and security interest in all positions in an X–M Account, all margin held in respect thereof, and all proceeds of any of the foregoing, as security for obligations of the Joint Clearing Member or Pair of Affiliated Clearing Members to the Clearing Organizations. However, the security interest in positions in the Non-Proprietary X–M Accounts secures only obligations arising from the Non-Proprietary X–M Account. Section 2 also provides for the designation of one of the Carrying Clearing Organizations as the Designated Clearing Organization for a Joint Clearing Member or Pair of Affiliated Clearing Members.

Section 3 of the Agreement contemplates that Clearing Members will be able to designate either Set of X–M Accounts (*i.e.*, either proprietary or non-proprietary) or both as X–M Pledge Accounts. As is the case with the Amended Agreement, the terms of the pledge arrangements have not yet been established. Accordingly, section 3 contains terms stating that no X–M Pledge Accounts shall be established until all necessary regulatory approval is obtained. No modifications are made in section 4 of the Agreement.

Section 5 of the Agreement provides that the Carrying Clearing Organizations will jointly determine the margin requirement for each Set of X–M Accounts carried by them and that any Carrying Clearing Organization may elect to use the margin system of another Carrying Clearing Organization for purposes of calculating margin. Any oral agreement between two Clearing Organizations to use the margin system of one of the two must be made over a recorded telephone line and promptly confirmed in writing. This change is intended for the protection of the parties to the oral agreement.

Section 6 of the Agreement describes the acceptable forms of initial margin. While the forms of initial margin are unchanged from the OCC–CME program, deposits of common stock

[2] The eligible contracts include: (1) OCC-cleared put and call options on the Standard & Poor's ("S&P") 500 Index, S&P 100 Index, Major Market Index, New York Stock Exchange ("NYSE") Composite Index, Financial News Composite Index, Institutional Index, Financial Times 100 Index, and the S&P MidCap 400 Index, Financial Times 100 Index, and the S&P MidCap 400 Index; (2) ICC-cleared NYSE Composite Index futures and put and call options on NYSE Composite Index futures; and (3) CME-cleared S&P 500 futures, put and call options on S&P 500 futures, Financial Times 100 Index futures, put and call options on Financial Times 100 Index futures, S&P MidCap 400 futures, and put and call options on S&P MidCap 400 futures.

[3] For a description of the OCC/CME cross-margining program, refer to Securities Exchange Act Release Nos. 27296 (September 26, 1989), 54 FR 41195 [File No. SR–OCC–89–01] (order approving OCC/CME proprietary cross-margining) and 29991 (November 26, 1991), 56 FR 61458 [File No. SR–OCC–90–1] (order approving OCC/CME non-proprietary, market professional cross-margining).

[4] Securities Exchange Act Release No. 27749 (March 7, 1990), 55 FR 8276 [File Nos. SR–OCC–90–2 and SE–ICC–90–1] (notice of proposed rule change relating to OCC–ICC cross-margining program).

[5] The definition in the proposed Agreement focuses on the relationship between the Affiliates as opposed to the status of an account carried by one Affiliate for the other. The definition of Affiliate as set forth in the OCC/CME Amended Agreement stated that each entity must be a person whose account with the other entity would not be the account of a customer. This definition was originally adopted in the context of proprietary cross-margining and was intended to insure the appropriateness under Commission and CFTC rules and regulations of commingling funds beneficially owned by each of the pair of Affiliates in a proprietary cross-margining account. However, there is no legal necessity for this definition to focus on the status of an account (*i.e.*, proprietary or customer) carried by one Affiliate for the other. Therefore, in order to eliminate confusion, the definition of Affiliate is based on the relationship of the entities (*i.e.*, control of one entity over the other or the entities being under common control). Letter from James C. Yong, Vice President and Deputy General Counsel, OCC, to Jonathan Kallman, Associate Director, Division of Market Regulation, Commission (July 7, 1992).

[6] A copy of each Account Agreement will be furnished to the Commission once they are finalized.

would be valued at 70% of current market value or at such lesser percentage as the Commission and Commodity Futures Trading Commission ("CFTC") approve. Other differences in section 6 include that the Carrying Clearing Organizations will jointly control margin in the form of letters of credit and that any oral consent of a Carrying Clearing Organization to draw on a letter of credit must be granted over a recorded telephone line and promptly confirmed in writing. This change also is intended for protection of each Carrying Clearing Organization.

Section 7 of the Agreement describes the daily settlement procedures in respect of the Sets of X–M Accounts for the bilateral and trilateral programs. In paragraph (a), language regarding recorded telephone lines and written confirmation has been included in the provisions permitting oral agreements. Other differences from the Amended Agreement include ICC's designation of OCC as its agent for purposes of approving or disapproving settlement instructions in order to facilitate the settlement process. ICC would give reasonable advance notice to OCC and CME in the event that it determines to revoke such designation. Further differences from the Amended Agreement include (1) a consolidation in paragraph (h) of the description of the procedures followed by OCC in issuing settlement instructions to an X–M Clearing Bank and (2) language in paragraph (i) setting forth the procedures to be followed by ICC in issuing such instructions. In addition, paragraph (j) to provides that non-proprietary cash settlement funds will not be paid to a Clearing Member until the Clearing Member has completed other non-proprietary, non-X–M settlements with all of the Carrying Clearing Organizations. Following application of such funds in accordance with the Agreement, the Carrying Clearing Organizations, of course, would pay any remaining funds to the Clearing Member's representative if such non-X–M settlements were not completed.

Section 8 of the Agreement describes the close-out of X–M Accounts. Most differences from the Amended Agreement are intended simply to adapt the Agreement to accommodate trilateral as well as bilateral cross-margining arrangements. The basic procedures to be followed by the Carrying Clearing Organizations in liquidating the X–M Accounts are unchanged from those described in the Amended Agreement. For clarity, a provision is added to section 8(d) of the Agreement to provide that funds held in the Non-Proprietary Liquidating Account may be used to reimburse the Proprietary Liquidating Account to the extent that proceeds from any Proprietary X–M Account were used to set off a liquidating deficit in any Non-Proprietary X–M Account (as provided for in section 8(b) of the Agreement). Section 8(d) of the Agreement provides further that the CME will be entitled to receive 50% of any surplus remaining in the Proprietary Liquidating Account. OCC or ICC, whichever is a Carrying Clearing Organization, will be entitled to the remaining 50% of such surplus and, if both are Carrying Clearing Organizations, that 50% will be allocated between OCC and ICC in a manner agreed upon between OCC and ICC.[7] The Agreement also provides that no Carrying Clearing Organization shall be entitled to retain an amount greater than its losses. In the event that the liquidation of a defaulting Clearing Member results in a shortfall, the Agreement provides that CME will bear 50% of the shortfall. OCC and ICC will bear the remaining 50% as allocated between themselves in an agreed upon manner, provided that if either OCC or ICC is not a Carrying Clearing Organization with respect to the defaulting Clearing Member, it will not be obligated to share in the shortfall.[8] New paragraph (i) is added to section 8 to provide that the Clearing Organizations will annually review the formulas for allocating surpluses and losses.

In general, section 9 of the Agreement requires that each Clearing Organization maintain the confidentiality of information obtained under the Agreement provided that such information is or does not become generally known to the public. This exception to the confidentiality requirement has been modified to provide that it will not be effective if the information becomes publicly known through an action or failure to act by the Clearing Organization seeking to rely on the exception. Other minor modifications have also been made to section 9 for clarity.

Section 10 of the Agreement reflects the agreements among the parties on indemnification. Section 10 has been revised to clarify the right of an indemnitor to control any legal defenses available to it and any of the indemnified parties. In addition, Section 10 of the Agreement is different from the Amended Agreement in order to provide that an indemnitor will pay for one separate firm of attorneys for each indemnified party in the event that the indemnified parties are two Clearing Organizations and the legal defenses that are available to one are different from or additional to those available to the other. Section 11 of the Agreement is essentially unchanged from the Amended Agreement.

A new paragraph (c) has been added to the termination provisions of section 12 of the Agreement. Under paragraph (c), if either OCC or ICC establishes a termination date then the Agreement would remain in effect as to the non-terminating parties. This provision is intended to eliminate the need for the non-terminating Clearing Organizations to execute a new cross-margining agreement.

Except for minor conforming and clarifying differences, Sections 13 through 16 of the Agreement are the same as in the Amended Agreement.

OCC's By-Laws and Rules

Most of the changes proposed by OCC to its By-Laws and Rules simply correspond to provisions of the proposed Agreement. References to Carrying CCO(s) and Sets of X–M Accounts are added to and references to Pairs of X–M Accounts have been deleted from the appropriate sections of Article I of the By-Laws and section 24 of Article VI of the By-Laws. Conforming changes are made to other sections of Article I, section 123 of Article VI, and section 5 of Article VIII of the By-Laws.

The amendments to various provisions in Chapter VII of OCC's Rules add references to Carrying CCO(s) and to Sets of X–M Accounts, delete references to Pairs of X–M Accounts, and make other conforming changes. Rule 706 is amended to reflect that, if a cash amount is due to a Joint Clearing Member or a Pair of Affiliated Clearing Members, settlement will not be made

[7] OCC and ICC would allocate their 50% of any surplus between themselves on a proportionate basis. Each Clearing Organization's share of such surplus would be determined by multiplying the amount of the surplus by a fraction, the numerator of which would be the number of Eligible Contracts in the X–M Accounts cleared by that Clearing Organization, and the denominator of which would be the total number of Eligible Contracts in the X–M Accounts cleared by both Clearing Organizations, as fixed at the time of the Clearing Member's suspension.

[8] If both OCC and ICC are Carrying Organizations, their 50% of any shortfall would also be allocated between them a proportionate basis. One Clearing Organization's share of such losses would be determined by multiplying the amount of the shortfall by a fraction, the numerator of which would be the number of Eligible Contracts in the X–M Accounts cleared by that Clearing Organization, and the denominator of which would be the total number of Eligible Contracts in such X–M Accounts cleared by both Clearing Organizations, as fixed at the time of the Clearing Member's suspension.

until all settlements are completed in respect to all non-proprietary accounts carried by it or them at OCC and the Participating CCOs. Rule 707(b) is amended to reflect that any shortfall resulting from the liquidation of the Sets of X–M accounts will be allocated between or among OCC and the Participating CCO(s) in accordance with the Participating CCO Agreement.

Rules 1001 and 1106 are amended to add references to Sets of X–M Accounts and to delete references to Pairs of X–M Accounts.

ICC Rules

The changes proposed by ICC to its Rules are intended to implement the proposed Agreement. Rule 101 is amended to define terms used in the Agreement. The added terms and definitions are based on those found in OCC's By-Laws relating to cross-margining with Participating CCO(s). Of course, the terms and definitions have been modified as necessary to accommodate and additional bilateral cross-margining program between ICC and CME and the trilateral cross-margining program among ICC, OCC, and CME. For example, the term Participating CO is defined to mean OCC or a CCO, other than ICC, that has entered into a cross-margining agreement with ICC. While the term Carrying CO is defined to mean a Participating CO that carries the cross-margined account of a particular clearing member. As noted above, the latter term reflects that either all three or only two of the Clearing Organizations will carry X–M Accounts. The term Set of X–M Accounts also has been added to accommodate the bilateral and trilateral cross-marginning arrangements under the Agreement.

As the cross-margining programs would extend to proprietary and non-proprietary accounts, the terms Proprietary X–M Account, Non-Proprietary X–M Account, and Market Professional have been added to Rule 101. The definitions are based on the definitions for such terms included in the Amended Agreement between OCC and CME and have been modified as necessary to accommodate the bilateral and trilateral programs.

Existing definitions in Rule 101 also have been revised to accommodate the existing bilateral cross-margining program with the CME and the trilateral cross-margining program. A Joint Clearing Member is now defined to mean a clearing member of ICC and of each Carrying CO and a Pair of Affiliated Clearing Members is defined to mean two clearing members that are Affiliates of one another, one of which is an ICC clearing member and one or the other of which is clearing member of each Carrying CO. Other revisions are made to conform terms to the bilateral and trilateral programs.

Rule 301 is amended to specify that the term commodity interest contracts includes OCC options in the case of a Joint Clearing Member or Pair of Affiliated Clearing Members that have elected cross-margining pursuant to Rule 514. Rule 302 is amended to provide that any amount owed by ICC to a Participating CO as the result of the liquidation of Sets of X–M Accounts will be deemed to be a loss suffered by ICC resulting from a Clearing Member's failure to discharge an obligation to ICC when due.

Rule 513 is amended to conform its provisions to changes made in Rule 101. New Rules 514 through 520, which have been adapted from OCC's Rules for cross-margining with Participating CCOs, are added to provide for the bilateral cross-margining with the CME and the trilateral program among ICC, OCC, and CME. Rule 514 sets out ICC's authority to enter into cross-margining programs and provides that Joint Clearing Members and Pairs of Affiliated Clearing Members must enter into X–M Account Agreements. Rule 514 provides further that the election of a Joint Clearing Member or a Pair of Affiliated Clearing Members to participate in cross-margining shall be subject to the approval of the ICC and each Carrying CO.

Rule 515 describes the X–M Account Agreements that Joint Clearing Members and Pairs of Affiliated Clearing Members are required to execute. Rule 515 also requires each Joint Clearing Member or Pair of Affiliated Clearing Members to establish a separate bank account for cross-margining settlements. Rule 516 provides for the designation of the Designated Clearing Organization. Rule 517 states that the amount of margin required by ICC and the Carrying COs shall be determined in accordance with the applicable cross-margining agreement and sets forth ICC's authority to require the deposit of additional margin. Rule 518 describes the acceptable forms of margin. Rule 519 describes the daily settlement procedures. Rule 520 implements the provisions of section 8 of the Agreement.

Rule 614 is amended to specify that its provisions will not apply to Sets of X–M Accounts and that margin and all other funds of a suspended Clearing Member shall be subject to Rule 520 and the Participating CO Agreement. Rule 614 also is amended to provide that the provisions of Rules 615 through 619 will apply to Sets of X–M Accounts only to the extent that such rules are not inconsistent with Rule 520 and the applicable Participating CO Agreement.

The proposed rule changes are consistent with the purpose and requirements of section 17A of the Act, as amended, because they extend the benefits of cross-margining by providing for a trilateral cross-margining program and, in the case of ICC, an additional bilateral cross-margining program among Participating Clearing Organizations. The proposals thereby enhance the safety of the national clearance and settlement system while providing lower clearing margin costs to participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC and ICC do not believe that the proposed rule changes would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited by OCC or ICC with respect to the proposed rule changes, and none have been received by OCC or ICC.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days after the date of publication in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consent, the Commission will:

(A) By order approve such proposed rule changes or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the

proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to File Nos. SR–OCC–92–28 and SR–ICC–92–05 and should be submitted by December 24, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–29274 Filed 12–2–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31530; International Series Release No. 496; File No. SR–PSE–91–33]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Filing of Amendment to and Order Granting Partial Accelerated Approval of a Proposed Rule Change Relating to the Listing of Options on American Depositary Receipts

November 27, 1992.

I. Introduction

On November 20, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("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 provide for the listing and trading of options on American Depositary Receipts ("ADRs") and preferred stock.[3] This order only approves the proposed rule change with respect to options on ADRs where there is an effective surveillance sharing agreement in place between the PSE and the primary exchange on which the foreign security underlying the ADR is listed or the governmental regulatory authority overseeing such exchange, or if the Commission otherwise approves the listing without the agreement.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 30048 (December 9, 1991), 56 FR 65527 (December 17, 1991). No comment letters were received on the proposed rule change.

II. Description

The proposal under consideration would authorize the PSE to list and trade options on ADRs where the underlying foreign security is subject to an effective surveillance sharing agreement and the ADR meets or exceeds Exchange's established uniform options listing standards. First, to be eligible for listing and continued trading the proposal requires that the PSE have effective surveillance sharing agreements in place with the foreign exchanges that serve as the primary markets for the foreign securities underlying the ADRs or with the governmental regulatory authorities overseeing such markets, unless the Commission otherwise approves the options' listing without an agreement. Second, the initial listing standards would require that the ADRs underlying Exchange-listed options have a "float" of 7,000,000 ADRs outstanding, 2,000 shareholders, trading volume of at least 2,400,000 over the prior twelve month period, and a minimum price of 7½ for a majority of the business days during the preceding six month period. Moreover, options on ADRs must meet or exceed the maintenance criteria for continued listing under the PSE rules. Those criteria include: the ADRs underlying Exchange-listed options must maintain a "float" of 6,300,000 ADRs; 1600 shareholders; trading volume of at least 1,800,000 over the prior twelve month period; and a minimum price of $5 on a majority of the business days during the preceding six month period.

In addition, the Exchange listing standards require that the ADR underlying an ADR option be registered and listed on a national securities exchange or traded through the facilities of a national securities association and be reported as a national market system security. The issuers of the ADRs also must be in compliance with any applicable requirements of the Act. Additionally, the PSE will make reasonable inquiry to evaluate the securities underlying the ADRs to ensure that these securities are generally consistent with the above-noted listing requirements.

III. Discussion

The Commission finds that the portions of the proposed rule change related to the listing of options on certain ADRs where there is an effective surveillance sharing agreement in place is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5). Specifically, the Commission finds that allowing options to trade on ADRs, among other things, gives investors a better means to hedge their positions in the ADRs, as well as enhanced market timing opportunities.[5] Further, the pricing of ADRs underlying an ADR option may become more efficient and market makers in these ADRs, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets. In sum, options on ADRs likely will engender the same benefits to investors and the market place that exist with respect to options on common stock.

The Commission also believes that it is appropriate to permit the PSE to list and trade options on certain ADRs given that the proposal includes specific provisions related to the protection of investors. First, the proposal requires that the ADRs must meet the PSE's uniform options listing standards in all respects. As described above, this would include the initial and maintenance criteria. These criteria ensure, among other things, that the underlying ADRs will maintain adequate price and float to prevent susceptibility to manipulation. Second, the PSE has represented that it will make a reasonable inquiry to evaluate securities underlying ADRs, to ensure that these securities are generally consistent with the requirements set forth in the Exchange's options listing standards.[6]

The Commission recognizes that, in some cases under the proposal, an ADR underlying an option could meet the options listing standards while the

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] The PSE submitted Amendment No. 1 to the proposed rule change on August 28, 1992. This amendment modifies the proposal to permit the listing of ADR options that meet Exchange listing standards where the Exchange has an effective surveillance sharing agreement with the exchanges that serve as the primary exchanges for the foreign securities underlying the ADR options or with the governmental regulatory authorities overseeing such exchanges. Amendment No. 1 also provides that the PSE may list ADR options without having an effective surveillance sharing agreement in place if the Commission otherwise approves the listing the ADR options without the existence of a surveillance sharing agreement.

[4] The Commission is continuing to review the Exchange's proposal to list options on preferred stock.

[5] For example, if an investor wants to invest in ADRs but he does not have sufficient cash available until a future date, he can purchase the ADR option now for less money and exercise the option to purchase the ADRs at a later date.

[6] See letter from Michael D. Pierson, Staff Attorney, PSE to Monica C. Michelizzi, Staff Attorney, Commission, dated October 30, 1992.

foreign security on which the ADR is based may not meet these standards in every respect. For example, in the case of ADRs overlying certain foreign securities, one ADR could represent several shares of a specific stock so that the price of the ADR will meet exchange listing standards even though the price of the foreign security may not meet the price standards because the market price of the foreign security is less than the PSE standard. The Commission believes, however, that requiring the PSE to review the securities underlying the ADRs to ensure that they are generally consistent with the Exchange's options listing standards, along with other market safeguards, will adequately protect investors from the possibility that an ADR option can be easily manipulated.[7]

Third, the proposal requires that the PSE have an effective surveillance sharing agreement in place with the primary exchange on which the security underlying the ADR trades or the governmental regulatory authority overseeing such exchange, unless the Commission otherwise approves the listing of ADR options without the existence of a surveillance sharing agreement. As a general matter, the Commission believes that the existence of an effective surveillance sharing agreement between an exchange proposing to list an equity option, such as options on ADRs, and the exchange trading the stock underlying the equity option is necessary to detect and deter market manipulation and other trading abuses.[8] In particular, the Commission notes that effective surveillance sharing agreements provide an important deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. These agreements are especially important, in the context of derivative products based on foreign securities, because they facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions. The Commission further believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of an effective surveillance agreement.

In the context of ADRs, the Commission generally believes that the relevant underlying equity market is the primary market on which the security underlying the ADR trades. This is because the market for the security underlying the ADR generally is larger in comparison to the ADR market, both in terms of share volume and the value of trading. Thus, as a general matter, the market for the security underlying the ADR is the price-discovery market and, therefore, would be instrumental in engaging in manipulative or other abusive trading strategies in conjunction with transactions in the overlying ADR options market.[9] Further, because of the leverage provided by an option on an ADR, the Commission believes these requirements will help ensure the integrity of the marketplace.

In summary, the Commission believes the PSE will have the ability to surveil adequately trading in the ADR options market and the related equity market because the PSE's proposal requires that there be an effective surveillance sharing agreement in place between the PSE and the primary exchange on which the security underlying the ADR trades or the governmental regulatory authority overseeing such exchange.[10]

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 is identical to a proposed rule change submitted by the Amex that was subject to the full notice and comment period.[11] The Commission received no comments on the Amex's proposal. Accordingly, the Commission believes it is not necessary to separately notice the PSE's proposal for comment. The Commission finds, therefore, that no new issues are raised by this amendment. Accordingly, the Commission believes it is consistent with section 19(b)(2) and 6(b)(5) of the Act to approve Amendment No. 1 to the PSE's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 24, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[12], That the portion of the proposed rule change (SR–PSE–91–26) related to the listing of options on ADRs where there is an effective surveillance sharing agreement in place between the PSE and the primary exchange on which the security underlying the ADR trades or the governmental regulatory authority overseeing such exchange is approved,

[7] For example, we would expect an Exchange to consider delisting an option on an ADR if the price and public float of the underlying security both did not meet trading or size maintenance standards, or if the security underlying the ADR failed to meet other standards that raised manipulative concerns.

[8] The Commission notes that the PSE, along with the other national securities exchanges and the National Association of Securities Dealers ("NASD"), the domestic markets on which the ADRs underlying the ADR options may trade, are members of the Intermarket Surveillance Group ("ISG"), which will provide for the exchange of necessary surveillance information concerning trading activity in the ADR markets underlying ADR options. ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990.

[9] See also Securities Exchange Act Release No. 26653 (March 21, 1989), 54 FR 12705 (order approving the trading of options on the International Market Index ("IMI"), an index comprised of ADRs traded in the United States based on foreign securities). In this approval order, the Commission specifically required that there be effective surveillance sharing agreements to be in place between the American Stock Exchange ("Amex")-and the foreign exchanges on which the securities underlying the ADRs trade so that a substantial percentage of the Index was covered by effective surveillance sharing agreements. In particular, 78% of weight of the Index was covered by effective surveillance sharing agreements. The Commission further recommended that the Amex obtain effective surveillance sharing agreements with the exchanges on which the foreign securities underlying the ADRs that comprised the remaining 22% of the weight of the Index traded.

[10] Moreover, as noted above, the PSE, along with the other national securities exchanges and the NASD, the domestic markets on which the ADRs underlying the ADR options may trade, is a member of the ISG and would have access to surveillance information regarding trading in the ADR itself, in addition to surveillance information on the security underlying the ADR pursuant to an effective surveillance sharing agreement.

[11] See Securities Exchange Act Release No. 31117 (August 28, 1992), 57 FR 40703.

[12] 15 U.S.C. 78s(b) (1988).

effective December 1, 1992. Accordingly, the Exchange may submit listing certificates for ADR options on December 1, 1992 pursuant to Rule 12d1–3 under the Act and commence trading in the options according to the time parameters established in the Joint Listing Procedures Plan.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–29317 Filed 12–2–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31532; International Series Release No. 498; File No. SR–Phlx–91–40]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Amendment to and Order Granting Partial Accelerated Approval of a Proposed Rule Change Relating to the Listing of Options on American Depositary Receipts

November 27, 1992.

I. Introduction

On October 18, 1991, and September 28, 1992, the Philadelphia Stock Exchange ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), 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, and Amendment No. 1 to the proposed rule change, to provide for the listing and trading of options on American Depositary Receipts ("ADRs") and preferred stock.[3] This order only approves the proposed rule change with respect to options on ADRs where there is an effective surveillance sharing agreement in place between the Phlx and the primary exchange on which the foreign security underlying the ADR is listed, or if the Commission otherwise approves the listing without the agreement.[4] The Commission also is publishing this notice to solicit comments and Amendment No. 2 from interested persons.[5]

II. Description

The proposal under consideration would authorize the Phlx to list and trade options where the underlying foreign security is subject to an effective surveillance sharing agreement and the ADR meet or exceed the Exchange's established uniform options listing standards. First, to be eligible for listing and continued trading the proposal requires that the Phlx have effective surveillance sharing agreements in place with the foreign exchanges that serve as the primary markets for the foreign securities underlying the ADRs, unless the Commission otherwise approves the options' listing without an agreement. Second, the initial listing standards would require that the ADRs underlying Exchange-listed options have a "float" of 7,000,000 ADRs outstanding, 2,000 shareholders, trading volume of at least 2,400,000 over the prior twelve month period, and a minimum price of $7½ for a majority of the business days during the preceding six month period. Moreover, options on ADRs must meet or exceed the maintenance criteria for continued listing under the Phlx rules. Those criteria include: The ADRs underlying Exchange-listed options must maintain a "float" of 6,300,000 ADRs; 1600 shareholders; trading volume of at least 2,400,000 over the prior twelve month period; and a minimum price of $5 on a majority of the business days during the preceding six month period.

In addition, the initial listing standards require that the ADR underlying an ADR option be registered and listed on a national securities exchange or traded through the facilities of a national securities association and be reported as a national market system security. The issuers of the ADRs also must be in compliance with any other applicable requirements of the Act. Additionally, the Phlx will make reasonable inquiry to evaluate the securities underlying the ADRs to ensure that these securities are generally consistent with the above-noted listing requirements.

III. Discussion

The Commission finds that the portions of the proposed rule change related to the listing of options on certain ADRs where there is an effective surveillance sharing agreement in place is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5). Specifically, the Commission finds that allowing options to trade on ADRs, among other things, gives investors a better means to hedge their positions in the ADRs, as well as enhanced market timing opportunities.[6] Further, the pricing of ADRs underlying an ADR option may become more efficient and market makers in these ADRs, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets. In sum, options on ADRs likely will engender the same benefits to investors and the market place that exist with respect to options on common stock.

The Commission also believes that it is appropriate to permit the Phlx to list and trade options on certain ADRs given that the proposal includes specific provisions related to the protection of investors. First, the proposal requires that the ADRs must meet the Phlx's uniform options listing standards in all respects. As described above, this would include the initial and maintenance criteria. These criteria ensure, among other things, that the underlying ADRs will maintain adequate price and float to prevent the ADR options from being readily susceptible to manipulation. Second, the Phlx has represented that it will make a reasonable inquiry to evaluate securities underlying ADRs, to ensure that these securities are generally consistent with the requirements set forth in the Exchange's options listing standards.

The Commission recognizes that in some cases under the proposal, an ADR underlying an option could meet the options listing standards while the foreign security on which the ADR is based may not meet these standards in every respect. For example, in the case of ADRs overlying certain foreign securities, one ADR could represent several shares of a specific stock so that

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[13] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] The Phlx submitted Amendment No. 2 to the proposed rule change on November 25, 1992. This amendment proposes additional requirements for the listing of options on ADRs. Specifically, Amendment No. 2 requires that the Exchange must have effective surveillance sharing agreements in place with the exchanges that serve as the primary exchanges for the foreign securities underlying the ADRs, unless the Commission otherwise approves the listing of ADR options without the existence of a surveillance sharing agreement. In Amendments No. 2, the Phlx also represented that it will make reasonable inquiry to evaluate securities underlying ADRs to ensure that these securities are generally consistent with the requirements set forth in the Exchange's options listing standards.

[4] In Amendment No. 1 the Phlx also has requested approval to list options on certain ADRs where it does not have effective surveillance sharing agreements in place with the primary markets for the securities underlying these ADRs. The Commission is continuing to review these proposals and is not, at this time, approving the listing of options on ADRs overlying those stocks.

[5] The proposal was noticed for comment in Securities Exchange Act Release No. 29839 (October 18, 1991), 56 FR 55356. No. comment letters were received on the proposed rule change as originally submitted. The Commission is continuing to review the Exchange's proposal to list options on preferred stock.

[6] For example, if an investor wants to invest in ADRs but does not have sufficient cash available until a future date, he can purchase an ADR option now for less money and exercise the option to purchase the ADRs at a later date.

the price of the ADR will meet exchange listing standards even though the market price of the foreign security is less than the Phlx standard. The Commission believes, however, that requiring the Phlx to review the securities underlying the ADRs to ensure that they are generally consistent with the Exchange's options listing standards, along with other market safeguards, will adequately protect investors from the possibility that an ADR option can be easily manipulated.[7]

Third, the proposal requires that the Phlx have an effective surveillance sharing agreement in place with the primary exchange on which the security underlying the ADR trades, unless the Commission otherwise approves the listing of ADR options without the existence of a surveillance sharing agreement. As a general matter, the Commission believes that the existence of an effective surveillance sharing agreement between an exchange proposing to list an equity option, such as options on ADRs, and the exchange trading the stock underlying the equity option is necessary to detect and deter market manipulation and other trading abuses.[8] In particular, the Commission notes that effective surveillance sharing agreements provide an important deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. These agreements are especially important in the context of derivative products based on foreign securities because they facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions. The Commission further believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of an effective surveillance sharing agreement.

In the context of ADRs, the Commission generally believes that the relevant underlying equity market is the primary market on which the security underlying the ADR trades. This is because the market for the security underlying the ADR generally is larger in comparison to the ADR market, both in terms of share volume and the value of trading. Thus, as a general matter, the market for the security underlying the ADR is the price-discovery market and, therefore, would be instrumental in engaging in manipulative or other abusive trading strategies in conjunction with transactions in the overlying ADR options market.[9] Further, because of the leverage provided by an option on an ADR, the Commission believes these requirements will ensure the integrity of the marketplace.

In summary, the Commission believes the Phlx will have the ability to surveil adequately trading in the ADR option market and the related equity market because the Phlx's proposal requires that there be an effective surveillance sharing agreement in place between the Phlx and the primary market on which the security underlying the ADR trades.[10]

The Commission finds good cause for approving Amendment No. 2 to file Phlx–91–40 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. First, the provisions in Amendment No. 2 regarding the application of the options listing standards to the ADRs and the requirement that there be an effective surveillance sharing agreement in place between the Phlx and the primary market for the security underlying the ADR is identical to a proposed rule change submitted by the Amex that was subject to the full notice and comment period.[11] The Commission received no comments on the Amex's proposal. Accordingly, the Commission believes it is not necessary to separately notice the Phlx's proposal for comment. Second, with respect to the provisions in Amendment No. 2 requiring the Phlx to a make reasonable inquiry to evaluate securities underlying ADRs to ensure that these securities are generally consistent with the requirements set forth in the Exchange's options listing standards, the Commission believes that these provisions will strengthen the regulatory requirements applicable to options on ADRs by serving to ensure that the markets for the security underlying the ADRs are not readily susceptible to manipulation. The Commission finds, therefore, that no new issues are raised by this amendment. Accordingly, the Commission believes it is consistent with sections 19(b)(2) and 6(b)(5) of the Act to approve Amendment No. 2 to the Phlx's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 24, 1992.

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[7] For example, we would expect an Exchange to consider delisting an option on an ADR if the price and public float of the underlying security did not meet trading or size maintenance standards, or if the security underlying the ADR failed to meet other standards that raised manipulative concerns.

[8] The Commission notes that the Phlx, along with the other national securities exchanges and the National Association of Securities Dealers, the domestic markets on which the ADRs underlying the ADR options may trade, are members of the Intermarket Surveillance Group ("ISG"), which will provide for the exchange of necessary surveillance information concerning trading activity in the ADR markets underlying ADR options. ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990.

[9] See also Securities Exchange Act Release No. 26653 (March 21, 1989), 54 FR 12705 (order approving the trading of options on the International Market Index ("IMI"), an index comprised of ADRs traded in the United States based on foreign securities). In this approval order, the Commission specifically required that there be effective surveillance sharing agreements in place between the American Stock Exchange ("Amex") and the foreign exchanges on which the securities underlying the ADRs trade so that a substantial percentage of the Index was covered by effective surveillance sharing agreements. In particular, 78% of the weight of the index was covered by effective surveillance sharing agreements. For the remaining 22% of the Index, the Commission further recommended that the Amex obtain effective surveillance agreements with the exchanges on which the foreign securities underlying the ADRs trade.

[10] Moreover, as noted above, *supra* note 8, the Phlx, along with the other national securities exchanges and the National Association of Securities Dealers, the domestic markets on which the ADRs underlying the ADR options may trade, are members of the ISG, and would have access to surveillance information regarding trading in the ADR itself, as well as access to information on the security underlying the ADR pursuant to an effective surveillance sharing agreement.

[11] See Securities Exchange Act Release No. 31117 (August 28, 1992), 57 FR 40703.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the portion of the proposed rule change (SR–Phlx–91–40) related to the listing of options on ADRs where there is an effective surveillance sharing agreement in place between the Phlx and the primary exchange on which the security underlying the ADR trades is approved, effective December 1, 1992.

Accordingly, the Exchange may submit listing certificates for ADR options on December 1, 1992 pursuant to Rule 12d1–3 under the Act and commence trading in the options according to the time parameters established in the Joint Options Listing Procedures Plan.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–29316 Filed 12–2–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19126; File No. 812–7828]

CIGNA Annuity Funds Group, et al.; Application for Exemption

Date: November 25, 1992

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: CIGNA Annuity Funds Group, CIGNA High Income Shares, CIGNA Variable Products Group and INA Investment Securities, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under Sections 6(c), 17(b) and 17(d) of the 1940 Act and Rule 17d–1 thereunder for exemptions from sections 13(a)(2), 17(a), 17(d), 18(a), 18(c), 18(f)(1), 22(f), 22(g), 23(a) and 23(c) of the 1940 Act and Rule 2a–7 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting the Applicants and all subsequently registered investment companies organized or sponsored by CIGNA Corporation ("CIGNA") or its affiliates (collectively, the "CIGNA Funds") to amend existing deferred fee arrangements with their trustees or directors and enter into and implement new deferred fee arrangements on the terms described herein.

FILING DATE: The application was filed on November 21, 1991 and amended on May 5, 1992 and October 13, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 21, 1992 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. CIGNA Annuity Funds Group, CIGNA High Income Shares and CIGNA Variable Products Group, One Financial Plaza, Springfield, Massachusetts 01103. INA Investment Securities, Inc., Two Liberty Place, 1601 Chestnut Street, Philadelphia, Pennsylvania 19192.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272–3046, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. CIGNA Annuity Funds Group is an open-end management investment company organized as a Massachusetts business trust, and currently consists of five separate series of shares. CIGNA High Income Shares is a closed-end management investment company organized as a Massachusetts business trust and currently consists of one series of shares. CIGNA Variable Products Group is an open-end management investment company organized as a Massachusetts business trust with one series in operation. INA Investment Securities, Inc. is a closed-end management investment company incorporated under the laws of the State of Delaware, with a single series. CIGNA Investments, Inc., an indirect, wholly-owned subsidiary of CIGNA Corporation, currently serves as the investment adviser for each of the Applicants and is registered under the Investment Advisers Act of 1940.

2. The Board of Trustees (including the Board of Directors of INA Investment Securities, Inc.) of each Applicant consists of five persons, a majority of whom are not "interested persons" of such Applicant within the meaning of section 2(a)(19) of the 1940 Act. Each of the trustees who is not an interested person of the Applicants receives an annual retainer of $13,000 (or $16,000 if the trustee also serves as chairman of a committee of the Board) for services rendered to all of the Applicants, plus meeting fees of $1,000 for each Board meeting and committee meeting attended, which retainer and fees collectively are, and are expected to continue to be, insignificant in comparison to the total net assets of the Applicants. No trustee who is an interested person of the Applicants receives any remuneration from the Applicants.

3. In accordance with exemptive orders previously granted,[1] the trustees of the CIGNA Funds[2] are entitled to participate in certain deferred fee arrangements.[3] Under those arrangements, deferred fees accrue interest on a daily basis from and after the date of credit in an amount equal to the amount that would have been earned had such fees (and all interest thereon) been invested and reinvested in shares of the AIM Cash Fund of AIM Funds Group.[4] The deferred fee arrangements are implemented by means of a standard form of Deferred Fee Agreement (the "Agreement") entered into between a trustee and the participating CIGNA Fund. The effect of such Agreement is to permit individual trustees to elect to defer receipt of their trustees' fees to enable them to defer payment of income taxes on such fees or for other reasons.

4. The Applicants propose to increase the flexibility of the deferred fee arrangements by implementing an amended and restated agreement (the "New Agreement") which would provide that a trustee's deferred fees

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[12] 15 U.S.C. 78s(b) (1988).

[13] 17 CFR 200.30–3(a)(12) (1992).

[1] INA Investment Securities, Inc., Investment Company Act Release No. 16225 (January 14, 1988); CIGNA Annuity Fund, Inc., Investment Company Act Release No. 14200 (October 17, 1984); CIGNA Aggressive Growth Fund, Inc., Investment Company Act Release No. 13819 (March 12, 1984); CG Fund, Inc. Investment Company Act Release No. 13018 (February 9, 1983).

[2] The CIGNA Funds also include CIGNA Institutional Funds Group, a newly organized Massachusetts business trust.

[3] INA Investments, Inc. and predecessors of CIGNA Annuity Funds Group were applicants for the previously granted exemptive orders. CIGNA High income Shares and CIGNA Variable Products Group were organized subsequent to the previous orders, but have established deferred fee arrangements in reliance on such orders.

[4] AIM Funds Group (previously, CIGNA Funds Group) is an openend management investment company organized as a Massachusetts business trust, and currently consists of fourteen separate series of shares.

may be treated as if such fees (and all interest thereon) had been invested and reinvested in shares of one or more series of AIM Funds Group (including any successor to any such series) as may be agreed upon in writing from time to time by the management of the participating CIGNA Fund and the participating trustee (the "Underlying Securities"). The Applicants believe that the additional flexibility in the new deferred fee arrangements will enhance the ability of the CIGNA Funds to attract and retain trustees of the same high caliber as those who now serve on the Boards of the Applicants.

5. Under the New Agreement, the value of the book reserve account established by the participating CIGNA Fund (the "Deferred Fee Account") as of any date shall be equal to the value such account would have had as of such date if the amounts credited to such account had been invested and reinvested in the Underlying Securities from and after the date that the particular Underlying Securities were designated. The Underlying Securities for each Deferred Fee Account will be shares of the Cash Fund of the AIM Funds Group; provided, however, that such Deferred Fee Account shall be deemed to have been invested in such other Underlying Securities as may be agreed upon in writing by the participating trustee and the management of the CIGNA Fund that is a party to the New Agreement. Under the New Agreement the parties may, from time to time, agree to change the designated Underlying Securities.

6. Like the existing Agreement, the New Agreement will provide that the CIGNA Funds will be under no obligation to the trustee to purchase, hold or dispose of any investments, but, if a CIGNA Fund chooses to purchase investments to cover its obligations, such investments will be a part of the assets and property of that CIGNA Fund. As a matter of prudent risk management, it is intended in all cases that the participating CIGNA Fund will purchase and hold the Underlying Securities in an amount equal to the deemed investment of the Deferred Fee Accounts of its trustees.

Applicant's Legal Arguments and Conditions

1. The Applicants believe that deferral of trustee's fees in accordance with the New Agreement will have a negligible effect on each CIGNA Fund's assets, liabilities, net assets and net income per share. The effect of the New Agreement, like the effect of the existing Agreement, is merely to defer the payment of fees that the CIGNA Funds would be obligated to pay on a current basis. As is the case under the existing Agreement, liabilities created by the credits to the Deferred Fee Accounts under the New Agreement are expected to be matched by an equal amount of assets (i.e. direct investments in the Underlying Securities), which assets would not be held by the CIGNA Fund if fees were paid on a current basis. Further, as is the case under the existing Agreement, the New Agreement will not obligate any CIGNA Fund to retain a trustee in such capacity, nor will it obligate any CIGNA Fund to pay any (or any particular level of) trustee's fees to any trustee. After all payments under the New Agreement are made to a trustee, such trustee will be in no better position relative to the CIGNA Funds than if the deferred fees had been paid on a current basis and invested by the trustee.

2. Applicants represent that shares of a series of AIM Funds Group (or any successor thereto) will not be designated as Underlying Securities unless such Underlying Securities could at such time, be purchased by the participating CIGNA Fund without violating section 13(a)(3) of the 1940 Act. In addition, such shares will not be designated as Underlying Securities and Underlying Securities will not be purchased, if there is a material risk that the purchase of such shares by the participating CIGNA Fund would result in a violation of section 12(d)(1) of the 1940 Act. Also, the New Agreement provides that management of the participating CIGNA Fund may designate new securities as the Underlying Securities (pending a written agreement between the parties) if it reasonably believes the acquisition of the previously designated Underlying Securities would result in a violation of section 12(d)(1) by the participating CIGNA Fund.

3. Applicants state that the balance sheet for each CIGNA Fund will either show liability and asset entries for deferred fees or include a footnote explaining the offset of the liability for deferred fees with an equal amount of assets.

4. Applicants submit that any acquisition of Underlying Securities under the deferred fee arrangements is expected to have a negligible effect on the issuer of such securities. To this end, each CIGNA Fund will vote shares of any affiliated fund held pursuant to the deferred fee arrangements in proportion to the votes of all other holders of shares of such affiliated fund.

5. The Applicants represent that the deferred fee arrangements will be monitored by the management of each CIGNA Fund and, at least annually, the Board of Trustees of each CIGNA Fund will review records pertaining to these arrangements to determine whether the representations in the application remain accurate.

6. The Applicants contend that the New Agreement will not generate any of the characteristics of "senior securities" that led to the adoption of restrictions pertaining to such securities, that the restriction on transferability or negotiability of the deferred fees will have no adverse effects on the CIGNA Funds' shareholders, and that the deferral of fees under the New Agreement should be viewed as being issued not for services, but in return for the CIGNA Fund not being required to pay such fees on a current basis. Thus, the Applicants request exemptions from the provisions of sections 13(a)(2), 18(a), 18(c), 18(f)(1), 22(f), 22(g), 23(a) and 23(c) of the 1940 Act to the extent necessary to permit the CIGNA Funds to implement the deferred fee arrangements pursuant to the New Agreement.

7. Applicants represent that any money market series of the CIGNA Funds that values its assets using the amortised cost method will buy and hold the Underlying Securities that determine the performance of the Deferred Fee Account to achieve an exact match between such series' liability to pay deferred fees and the assets that offset that liability. Accordingly, the Applicants believe that the underlying concerns that have led the Commission to strictly prescribe the permissible characteristics of a money market fund's portfolio securities under Rule 2a–7 are not present.

8. The Applicants submit that the transactions proposed to be effected under the New Agreement are expected from section 17(a)(1) of the 1940 Act. Nevertheless, the Applicants request exemptive relief under section 17(b) of the 1940 Act. Section 17(b) provides that, notwithstanding section 17(a), an application for exemptive relief may be filed thereunder and an order granted by the Commission if the evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act; and (3) the proposed transaction is consistent with the general purposes of the Act. In this respect, the Applicants assert that, as is the case under the existing Agreement, under the New Agreement shares of series of AIM

Funds Group (including any successor to such series) will be sold to CIGNA Funds in connection with their deferred fee arrangements at the then-current net asset value and on the same terms and conditions as are available to other shareholders (subject to a waiver of any sales charge, which waiver is available to a variety of investors and is described in the prospectus for the Underlying Securities) as part of the continuous distribution of such shares. Thus, the terms of the proposed transactions involving the acquisition of the Underlying Securities by one or more CIGNA Funds under the New Agreement are fair and reasonable to all parties and consistent with their policies and the 1940 Act. Because the Commission is of the view that the exemptive relief afforded under section 17(b) generally relates only to particular transactions, the Applicants also request exemptive relief under section 6(c) of the 1940 Act from the provisions of section 17(a)(1) to the extent necessary to permit the CIGNA Funds to implement the deferred fee arrangements under the New Agreement.

9. Applicants assert that the New Agreement does not involve joint transactions between a CIGNA Fund and its trustees within the meaning of section 17(d) of the 1940 Act and Rule 17d–1 thereunder, because the New Agreement does not possess the profit-sharing characteristics required for a joint transaction as contemplated by the 1940 Act. However, to the extent that the New Agreement may be deemed to involve joint transactions between a CIGNA Fund and its trustees, the Applicants request exemptive relief from these provisions to implement the new deferred fee arrangements. Section 17(d) and Rule 17d–1 generally prohibit a registered investment company from participating in a transaction with an affiliated person and others on a basis that is inconsistent with the provisions, policies and purposes of the 1940 Act and that is different from or less advantageous than that of the other participant. The Applicants submit that as an affiliated person, the participating trustees will neither directly nor indirectly receive a benefit which will otherwise inure to the Cigna fund or any of its shareholders and thus the New Agreement will not constitute a joint or joint and several participation by an Cigna Fund with an affiliated person on a basis different from or less advantageous than that of the affiliated person. Further, as stated previously, Applicants believe that the New Agreement is consistent with the provisions policies and purposes of the 1940 Act.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions form sections 13(a)(2), 17(a), 17(d), 18(a), 18(c), 18(f)(1), 22(f), 22(g), 23(a) and 23(c) of the 1940 Act and Rule 2a–7 thereunder to permit the CIGNA Funds to enter into and implement deferred fee arrangements with their trustees meet the standards in sections 6(c), 17(b) and 17(d) of the 1940 Act and Rule 17d–1 thereunder.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–29325 Filed 12–2–92; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19129; 812–8162]

Heartland Group, Inc., et al.; Notice of Application

November 25, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Heartland Group, Inc. (the "Fund") and Heartland Advisors, Inc. (the "Adviser").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) and rule 22c–1.)

SUMMARY OF APPLICATION: Applicants seek an order that would permit them to impose a contingent deferred sales charge ("CDSC") on the redemption of certain shares and to waive the CDSC in certain specified instances.

FILING DATE: The application was filed on November 13, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 21, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 790 North Milwaukee Street, Milwaukee, Wisconsin 53202.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund, a Maryland corporation, is an open-end management investment company registered under the Act. The adviser serves as investment adviser to the Fund. The distribution services for the Fund are presently provided by the Adviser, and may in the future be provided by a wholly-owned subsidiary of the Adviser (the "Distributor").

2. Applicants seek an order that would permit two of the three portfolios currently offered by the Fund, Heartland Value Fund and Heartland U.S. Government Fund, and any additional portfolios the Fund may issue in the future (collectively the "Portfolios"), to impose a continent deferred sales charge ("CDSC") on certain redemptions of Portfolio shares.

3. Shares of the Portfolios are currently offered to the public at net asset value plus a front-end sales charge which ranges from 4.5% for purchases of less than $10,000 to no sales charge for purchases of $100,000 or more. Pursuant to a distribution plan under rule 12b–1, each Portfolio pays quarterly distribution fees of up to 0.3% of its average daily net assets computed on an annual basis.

4. Under the proposed CDSC arrangement, the front-end sales charge currently imposed on Portfolio shares will be replaced with a CDSC. The amount of the CDSC will depend on the number of years since the purchase of the shares being redeemed, as will be set forth in each Portfolio's prospectus. In no event will the aggregate amount of the CDSC exceed 3% of the purchase price paid by an investor for shares of a Portfolio. The CDSC will comply with the requirements of section 26(d) of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. The CDSC will be paid to defray distribution expenses incurred in connection with the offer and sale of

shares of the Portfolios. No CDSC will be charged on shares of a Portfolio purchased prior to the date that an order is issued pursuant to this application.

5. The amount of the CDSC will be calculated as a percentage of the lesser of the value of the redeemed shares at the time of purchase or at redemption. No CDSC will be imposed on shares purchased with reinvested income dividends or capital gains distributions. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing capital appreciation, next of shares representing payment of dividends, and finally of other shares held by the shareholder for the longest period of time. As a result, any charge will be imposed at the lowest possible rate.

6. Applicants propose to waive the CDSC that would otherwise be applicable to a redemption of shares in connection with redemptions: (a) Following death or disability, as defined in section 72(m)(7) of the Internal Revenue Code, as amended (the "Code"), of a shareholder if the Fund is notified of the death or disability at the time redemption is requested and such request is made within one year after death or disability of the shareholder; (b) of shares held by an individual retirement account ("IRA") or other qualified retirement plan and which redemptions (i) result from the death or disability of the employee or the tax-free return of an excess contribution, (ii) are made to effect a lump-sum or partial distribution from a qualified retirement plan in the case of retirement, or (iii) are made to effect a distribution from an IRA, a Keogh Plan, or section 403(b)(7) custodial account that is required because the distributee has reached the age at which distributions are required to commence, or as an alternative, if the board of directors so determines, the Fund may reduce the age so as to waive the CDSC with respect to distributions from such accounts after the distributee has attained the age at which distributions may be made without tax penalty; (c) of shares purchased by current or retired directors and officers of the Fund and Adviser, full-time employees of the Adviser, pension or profit-sharing plans established for the benefit of such employees, and registered representatives of broker-dealers who have signed Dealer agreements with the Distributor for their personal accounts; (d) made pursuant to a shareholder's participation in any systematic withdrawal plan adopted for a Portfolio; (e) by shareholders holding shares of a Portfolio with a value of over $1 million (or other specified amount) immediately prior to redemption; (f) effected by advisory accounts managed by the Adviser or any affiliated company or by any such affiliated company itself; (g) by any tax-exempt employee benefit plan for which continuation of its investment in a Portfolio would be improper under applicable law or regulation; (h) effected by another registered investment company as part of a merger or other reorganization with a Portfolio or by a former shareholder of such investment company of Portfolio shares acquired pursuant to such reorganization; (i) effected pursuant to the Fund's right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the applicable minimum account size; (j) by banks, trust companies, registered investment advisers, and other financial institutions with trust powers which use trust funds to purchase shares of a Portfolio; (k) in connection with shares sold to any state, county, or city, or any instrumentality, department, authority, or agency thereof, which is prohibited by applicable investment laws from paying a sales load or commission in connection with the purchase of shares of any registered management investment company.

7. In all exchange transactions among the Portfolios, applicants will comply with rule 11a–3.[1] The Fund proposes to provide a *pro rata* credit for any CDSC paid in connection with a redemption of shares, followed by a reinvestment within 30 days, or other specified period, of all or part of the redemption proceeds. Such credit will be distributed by the Distributor from its house account where the CDSC is held. The Distributor's house account will remain a sufficient balance to make such credits.

Applicants' Legal Conclusion

Applicants believe that implementation of the CDSC in the manner and under the circumstances described above would be fair and in the best interests of the shareholders of the Portfolios. Thus the granting of the requested order would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Consequently, applicants request an order of the Commission pursuant to section 6(c) of the Act for an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to the extent necessary to permit the proposed CDSC arrangement.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1989), as such rule is currently proposed, and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–29321 Filed 12–2–92; 8:45 am]

BILLING CODE 8010–01–M

[1] In Investment Company Act Release Nos. 18072 (April 1, 1991) (notice) and 18120 (April 29, 1991) (order), open-end management investment companies for which First Wisconsin Trust Company serves as transfer agent (including the Fund) were granted exemptive relief pursuant to section 11(a) to permit them to exchange their shares for shares of the money market portfolios of Portico Funds, Inc. The order requires applicants to comply with the provisions of rule 11a–3, except that exchange offers may be made to securityholders of certain investment companies that are not part of the same "group of investment companies" as the offeror. After the CDSC is implemented, applicants will continue to exchange shares in reliance on this order.

[Rel. No. IC–19127; 812–8104]

IDS Life Insurance Company, et al.

November 25, 1992.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: IDS Life Insurance Company ("Company") and IDS Life Accounts, F, IZ, JZ, G, H and N (the "Variable Accounts").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Variable Account under certain group deferred combination fixed/variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on September 28, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request,

personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 21, 1992 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The Applicants, c/o Mary Ellyn Minenko, Esq., IDS Life Insurance Company, IDS Tower 10, Minneapolis, MN 55440.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272–3046 or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance company organized under the laws of Minnesota in 1957. It is a wholly owned subsidiary of IDS Financial Corporation, which is in turn a wholly owned subsidiary of American Express Company.

2. The Variable Accounts are registered with the Commission as a unit investment trust under the 1940 Act. Each Variable Account invest in shares of a corresponding portfolio of the IDS Life Capital Resource Fund, Inc., a series fund, the IDS Life Special Income Fund, Inc., IDS Life Moneyshare Fund and IDS Life Managed Fund, Inc. (the "Funds"). IDS may, at a later date, create additional variable accounts to invest in any additional funds which may now or in the future be available or eliminate variable accounts or funds from time to time. Also, under certain conditions, IDS may substitute investments in shares of Funds with shares of other registered investment companies upon approval of the Commission.

3. The Contracts are group deferred combination fixed/variable annuity contracts. Participation in the Contracts will be accounted for separately by the issuance of Certificates showing participants' interests under the Contracts. The Contracts and related Certificates allow retirement plan participants to elect to have certificate values accumulate in all of the six Variable Accounts, as well as the Fixed Account. Retirement payments will be made on a variable and/or fixed basis.

4. The Company deducts a $30 administrative charge from each Certificate's value at the end of each certificate year. If a Certificate is surrendered, the Company will deduct the annual charge at the time of surrender. The annual administrative charge cannot be increased and does not apply after retirement payments begin. This charge reimburses the Company for the actual administrative costs expected over the life of the Certificates. The Company does not expect to profit from the administrative charge.

5. To compensate the Company for assuming mortality and expense risks, it will apply a daily mortality and expense risk charge to the Variable Accounts. This charge equals 1% of the average daily net assets of the Variable Accounts on an annual basis. The Company estimates that approximately two-thirds of this charge is for assumption of the mortality risk and one-third is for the assumption of expense risk. This charge cannot be increased during the life of the Contracts and related Certificates and does not apply after retirement payments begin. The Company assumes certain mortality risks by its contractual obligation to continue to make retirement payments for the entire life of the annuitant under annuity obligations which involve life contingencies. This assures each annuitant that neither the annuitant's own longevity nor an improvement in life expectancy generally will have an adverse effect on the retirement payments received under the Contracts and related Certificates. The payment option tables contained in the Contracts are based on the 1983 Individual Annuity Mortality Table. These tables are guaranteed for the life of the Contracts and related Certificates. The Company assumes additional mortality and certain expense risks by its contractual obligation to pay a death benefit upon the death of a Participant prior to the annuity date. The Company assumes additional mortality and certain expense risks by its contractual obligation to pay a death benefit upon the death of a Participant prior to the annuity date. The Company assumes an expense risk because the administrative charge may be insufficient to cover actual administrative expenses.

6. No sales charge is collected or deducted at the time purchase payments are applied under the Contracts and Certificates. A contingent deferred sales charge, however, will be assessed on certain full or partial surrenders. The charge applies if all or a part of the certificate value is withdrawn within the first eleven certificate years. The charge is 8% of the amount surrendered in the first through fourth certificate years, and then declines by 1% per year from 7% in the fifth certificate year to 1% in the eleventh certificate year. In no event will the aggregate surrender charges exceed 8.5% of purchase payments made to a certificate. The charge cannot be increased during the life of the Certificates. There is no surrender charge on amounts surrendered: After the eleventh certificate year; due to a Participant's retirement under the Plan on or after age 55; due to the death of a Participant; or upon settlement of the Certificate under an annuity payment option.

7. Certain states and local governments impose premium taxes. The Company will make a charge against the certificate value for any premium taxes to the extent the taxes are payable.

Applicants' Legal Analysis and Conditions

1. Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction from the Variable Accounts of the mortality and expense risk charge under the contracts. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan Certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants represent that the level of the mortality and expense risk charge is within the range of industry practice with respect to comparable variable annuity products. Applicants state the Company has reviewed publicly available information about other qualified annuity products taking into consideration such factors as current charge levels, charge level guarantees, death benefit guarantees, sales loads, surrender charges, availability of funds, investment options available under annuity contracts, market sector and the availability of retirement plans. The Company represents that it will maintain at its principal office, and make available on request of the Commission or its staff, a memorandum

setting forth its analysis, including its methodology and results.

3. Applicants acknowledge that the contingent deferred sales charge may be insufficient to cover all costs relating to the distribution of the Contracts and Certificates and that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the contingent deferred sales charge. In such circumstances, a portion of the mortality and expense charge might be reviewed as providing for a portion of the costs relating to distribution for the Contracts and related Certificates. Notwithstanding the foregoing, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Accounts and investors in the Contracts and related Certificates. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its principal office and will be available to the Commission or its staff on request.

4. The Company also represents that the Variable Accounts will only invest in an underlying mutual fund which, in the event it should adopt any plan under Rule 12b–1 under the Act to finance distribution expenses, would have such plan formulated and approved by a board of directors, a majority of which are not interested persons of such fund within the meaning of section 2(a)(19) of the Act.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts meet the standards in section 6(c) of the 1940 Act. In this regard, Applicants assert that the exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–29324 Filed 12–2–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25689]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 25, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete Statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 21, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney-at-law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Alabama Power Company, et al. (70–8095)

Alabama Power Company ("Alabama"), 600 North 18th Street, Brimingham, Alabama 35291, Georgia Power Company ("Georgia"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, Gulf Power Company ("Gulf"), 500 Bayfront Parkway, Pensacola, Florida 32501, Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, Savannah Electric and Power Company ("Savannah"), 600 Bay Street, East, Savannah, Georgia 31401, wholly owned public-utility subsidiary companies of The Southern Company, a registered holding company, and Southern Electric Generating Company ("SEGCO"), 600 North 18th Street, Birmingham, Alabama 35291, a 50% owned public-utility subsidiary company of each of Alabama and Georgia (collectively, Alabama, Georgia, Gulf, Mississippi, Savannah and SEGCO are referred to herein as the "Operating Affiliates"), have filed a declaration pursuant to section 12(c) of the Act and rule 42 thereunder.

The Operating Affiliates propose, at any time or from time to time through December 31, 1997, to acquire and retire their first mortgage bonds ("FMBs") and preferred stock ("PS"), as well as pollution control or industrial development revenue bonds ("Revenue Bonds") issued by public bodies for their benefit, up to the respective aggregate amounts indicated in the following table:

	FMB's [principal amount in millions of dollars]	PS [par or stated value in millions of dollars]	Revenue bonds [principal amount in millions of dollars]
Alabama	500	300	450
Georgia	1,000	500	1,300
Gulf	150	50	100
Mississippi	150	50	50
Savannah	100	20	18
SEGCO			25

The proposed transactions in which such securities are to be acquired may include (a) purchases on the open market, (b) purchases in privately negotiated transactions, and (c) acquisitions pursuant to tender or exchange offers to the then current holders in which the consideration offered consists of cash, first mortgage bonds, preferred stock or revenue bonds (as the case may be) of a newly issued series, or a combination thereof. If the securities are acquired by means of tender or exchange offers, the Operating Affiliates may offer to acquire specified amounts of a particular series or an entire series of such securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–29322 Filed 12–2–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19128; 812–8152]

United Financial Group, Inc.; Notice of Application

November 25, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: United Financial Group, Inc (the "Company").

RELEVANT ACT SECTIONS: Exemption requested under sections 6(c) and 6(e) of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order exempting it from all provisions of the Act, subject to certain exceptions, until December 30, 1993. The requested relief would continue an exemption originally granted until December 30, 1990 (the "1990 Order") and extended by amended orders until December 30, 1991 (the "1991 Order"), and December 30, 1992 (the "1992 Order").

FILING DATE: The application was filed on October 16, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 21, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 5847 San Felipe, suite 2600, Houston, Texas 77057.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Company was a savings and loan holding company whose primary asset and source of income was the United Savings Association of Texas ("USAT"). As a result of the severe recession in Texas beginning in 1986, USAT's financial condition deteriorated, and on December 30, 1988 it was placed into receivership. The assets of USAT were sold to an unaffiliated third party and the Company received no consideration for the loss of its primary subsidiary, thereby generating a substantial capital loss. In light of this capital loss, the Company determined not to liquidate, but instead to acquire an operating business.

2. The Company's efforts to acquire an operating business have been substantially hindered due to claims asserted against it by the Federal Savings and Loan Insurance Corporation ("FSLIC"). FSLIC asserted an approximately $534 million claim against the Company in January 1989 for failure to maintain the net worth of USAT (the "Net Worth Claim") and an approximately $14 million claim concerning certain tax refunds alleged to have been received by the Company (together with the Net Worth Claim, the "FDIC Claims"). In addition, the FDIC has asserted the existence of possible other claims (the "Indemnified Claims") against the Company and certain former officers and directors of the Company and USAT. The Company may have indemnification obligations to these former officers and directors. The FDIC has not alleged a dollar amount for any Indemnified Claims. Although the Company disputes the FDIC Claims and the Indemnified Claims, their existence constitutes a large contingent liability against the Company's assets, thus making it difficult for the Company to acquire an operating business.

3. During 1989 and 1990, the Company was in continuous negotiations with the Federal Deposit Insurance Company ("FDIC"), the successor to FSLIC, in an attempt to reach a resolution of the FDIC Claims and in early 1990 the Company reached a tentative agreement with the FDIC. However, in December 1990 the FDIC rejected the Company's settlement offer and informed the Company that no counter proposal would be offered. In mid-1991 the Company again contacted the FDIC to determine whether a settlement could be reached on the FDIC Claims. Beginning in July 1991, the Company and the FDIC's representatives again began negotiations and in August 1991, the Company offered a proposed settlement. Although the FDIC has not responded to the Company's settlement proposal, in December 1991 the FDIC requested, and the Company provided, an agreement to toll the statute of limitations for the period expiring July 31, 1992 so that the FDIC would have adequate time to review any possible claims against the Company that might reflect on global settlement. This tolling agreement was subsequently extended three times, initially through September 30, 1992, then through October 30, 1992, and most recently through November 30, 1992. During this tolling period, the Company has engaged in continuous discussions with the FDIC staff and as part of that process has furnished the FDIC with an extensive array of documents and financial records for their review.

4. On September 30, 1992, the Company held assets of approximately $13 million, comprised of approximately $11.1 million in cash and cash equivalents, $1.5 million in loans and notes receivable, and $.4 million in other assets. The Company's common stock currently is traded sporadically in the over-the-counter market. The Company does not employ any full-time employees. The Company's administrative operations are handled by contract bookkeepers, accountants, and attorneys.

5. Rule 3a-2 under the Act provides a one-year safe harbor to issuers that meet the definition of an investment company but intend to maintain that status only transiently. The Company relied on the safe harbor provided by this rule from December 30, 1988 until December 30, 1989. The expiration of the safe harbor period necessitated the filing of an application for exemption. In 1990 the Company was granted conditional relief from all provisions of the Act until December 30, 1990. Investment Company Act Release Nos. 17395 (March 21, 1990) (notice) and 17441 (April 18, 1990) (order). In 1991 this order was amended to extend this exemption until December 30, 1991. Investment Company Act Release Nos. 17941 (January 9, 1991) (notice) and 17989 (February 7, 1991) (order). In 1992, the order was amended to extend the exemption until December 30, 1992. Investment Company Act Release Nos. 18430 (December 5, 1991) (notice) and 18466 (December 31, 1991) (order).

6. As described in detail in the applications for the 1990 and 1991 Orders, during a portion of the period in which the requested exemption will be effective, it is possible that the Company will be subject to the jurisdiction of the federal bankruptcy courts. In this regard, the Company has formulated a plan of reorganization (the "Reorganization Plan") to be implemented under chapter 11 of the Bankruptcy Code once the FDIC approves a settlement of the FDIC Claims. The Reorganization Plan would settle the outstanding claims against the Company and provide a structure for the possible acquisition of a new operating business or businesses. Because the bankruptcy court is charged with protecting the interests of the Company's creditors and equity interest holders, the Company believes that it is not necessary for it to comply with section 17(a) or section 17(d) with

respect to transactions approved by the bankruptcy court.

Applicant's Legal Analysis

1. Section 3(a)(3) of the Act defines the term "investment company" to include any issuer that "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." The Company acknowledges that, based on its current mix of assets, it may be deemed to be an investment company under section 3(a)(3) of the Act.

2. By this application, the Company requests, pursuant to sections 6(c) and 6(e) of the Act, that the SEC issue an order amending the 1990 Order, thereby exempting the Company from all provisions of the Act, subject to certain exceptions, until December 30, 1993.

3. In determining whether to grant exemptive relief for a transient investment company, the Commission considers such factors as: (1) Whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its control; (2) whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and (3) whether the company invested in securities solely to preserve the value of its assets. The Company asserts that it meets these criteria.

4. The Company asserts that its failure to become primarily engaged in a non-investment business by December 30, 1992 is a result of factors beyond its control. The existence of the FDIC Claims has precluded the Company from investing its assets in a non-investment company business. Although the Company's executive officers reviewed numerous possible asset or business acquisitions, the magnitude of the FDIC Claims and the potential threat that the FDIC would seek to enjoin any utilization of the Company's assets has prevented the Company from investing its assets in a non-investment company business.

5. Pending the settlement of the FDIC Claims, the Company has limited its investments to high quality marketable securities, cash or cash equivalents. Thus, the Company asserts that it primarily invests in securities solely to preserve the value of its assets.

6. Although the Company has made substantial efforts to formulate alternative methods by which it can acquire an operating business and utilize its capital loss, the pending settlement negotiations of the FDIC Claims make it necessary for the Company to seek an extension of the 1990 Order. This would allow the Company to seek an FDIC settlement and, if successful, to formulate and implement new plans for becoming an operating business and utilizing the Capital Loss.

7. The Company believes that the issuance of an amended order exempting to from all provisions of the Act, subject to certain exemptions, until December 30, 1993 would be in the public interest and consistent with the protection of investors and the purposes of the Act. The Company believes that it would be unfair to its stockholders to require it to register as an investment company and that such registration is not necessary for the protection of its stockholders.

Applicant's Conditions

The Company agrees that the requested exemption will be subject to the following conditions, each of which will apply to the Company until it acquires an operating business or otherwise falls outside the definition of an investment company:

1. During the period of time the Company is exempted from registration under the Act, it will not purchase or otherwise acquire any securities other than securities with a remaining maturity of 397 days or less and that are rated in one of the two highest rating categories by a nationally recognized statistical rating organization, as that term is defined in rule 2a–7(a)(10) of the Act.

2. The Company will continue to comply with sections 9, 17(e) and 36 of the Act.

3. The Company will continue to comply with sections 17(a) and 17(d), subject to the following exceptions:

(a) if the Company becomes subject to the jurisdiction of the bankruptcy court, the Company need not comply with section 17(a) or section 17(d) with respect to any transaction, including without limitation the Reorganization Plan, that is approved by the bankruptcy court; and

(b) the Company would not be required to comply with section 17(a) or section 17(d) with respect to any transaction or series of transactions that result in its ceasing to fall within the definition of an "investment company" provided that (i) no cash payments are made to an "affiliated person" (as defined in the Act) of the Company as part of such transaction or series of transactions and (ii) no debt securities are issued to an affiliated person of the Company as part of such transaction or series of transactions unless such debt securities are expressly subordinated upon liquidation to claims of the holders of the Company's 9% Debentures.

4. The Company will continue to comply with section 17(f) of the Act as provided in rule 17f–2.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–29323 Filed 12–2–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 92–11–50; Dockets 48113 and 48114]

Applications of Dash Airlines, Inc. for Certificate Authority

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Dash Airlines, Inc. d/b/a Eclipse Airlines fit, willing, and able, and awarding its certificates of public convenience and necessity to engage in interstate, overseas, and foreign scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than December 14, 1992.

ADDRESSES: Objections and answers to objections should be filed in Dockets 48113 and 48114 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2340.

Dated: November 27, 1992.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–29278 Filed 12–2–92; 8:45 am]

BILLING CODE 4910–62–M

National Highway Traffic Safety Administration

[Docket No. 92–58; Notice 1]

Kewet Industri; Receipt of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Kewet Industri of Hadsund, Denmark, has petitioned for a temporary exemption from the automatic restraint requirements of Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection.* The basis of the petition is that an exemption would facilitate the development and field evaluation of a low-emission motor vehicle.

This notice is published in accordance with statutory requirements (15 U.S.C. 1410(a)) to provide notice and an opportunity to comment, and does not represent any agency determination of the merits of the petition.

Kewet manufactures a passenger car called the El-Jet. The vehicle is powered by on-board rechargeable batteries which drive an electric traction motor. The El-Jet, which produces no emissions, is therefore a "low-emission motor vehicle" within the meaning of NHTSA's authority to provide temporary exemptions.

Petitioner submits that the granting of a temporary exemption would facilitate the development of an electric vehicle industry in the United States. The vehicle is so small that it could serve as a replacement of the 3-wheel Cushman type meter reader vehicle in municipal fleets. It provides greater safety for the operator at a substantially lower price. Further, an exemption would promote learning and exchange of information between the Danish electric vehicle industry and the U.S. one. Finally, it will demonstrate the commercial viability of a "neighborhood electric vehicle."

Petitioner also submits that an exemption would not unreasonably degrade the safety of the vehicle. The El-Jet is equipped with a 3-point restraint system, and will otherwise comply with all applicable Federal motor vehicle safety standards. It complies with all current European motor safety standards and has passed a crash test at 50 kph. Its top speed is only 45 mph, reducing the risk of injury. Although it has requested a 2-year exemption, it is developing a driver's side air bag, and expects to be able to provide one in all cars manufactured after September 1993. Kewet projects sales of 30 to 50 vehicles through 1993.

In Kewet's opinion, a temporary exemption would be in the public interest and consistent with traffic safety objectives because it will contribute towards improving air quality and will "very shortly" fully comply with the Federal motor vehicle safety standards.

Interested persons are invited to submit comments on the petition. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 2590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 4, 1993.

Authority: 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on November 30, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92–29308 Filed 12–2–92; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 27, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0810

Regulation ID Number: LR–2013 (T.D. 7533) Final

Type of Review: Extension

Title: Time for Filing Returns and Other Documents

Description: This regulation tells a taxpayer where in the regulations the dates for filing returns and other documents may be found if the dates are not specified by statute. The information is used to avoid or establish the existence of a failure to file penalty.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 12,417

Estimated Burden Hours Per Respondent: 15 minutes

Frequency of Response: Other (as required)

Estimated Total Reporting Burden: 3,104 hours

Clearance Officer: Garrick Shear, (202)622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202)395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–29281 Filed 12–2–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 27, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treaury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0165

Form Number: IRS Form 4224
Type of Review: Extension
Title: Exemption from Witholding of Tax on Income Effectively Connected with the Conduct of a Trade or Business in the United States
Description: Form 4224 is used by nonresident alien individuals or fiduciaries, foreign partnerships, or foreign corporations to obtain exemption from withholding of tax on certain types of income if that income is effectively connected with a U.S. trade or business. The IRS uses the information to determine if the exemption is proper
Respondents: Individuals or households, Businesses or other forprofit
Estimated Number of Respondents/ Recordkeepers: 24,750
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	7 minutes.
Learning about the law or the form.	11 minutes.
Preparing the form	14 minutes.
Copying and sending the form to the IRS.	14 minutes.

Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 18,810 hours
OMB Number: 1545–0985
Regulation ID Number: PS–128–86 NPRM and PS–127–86 TEMP
Type of Review: Extension
Title: Generation-Skipping Transfer Tax Regulations Under the Tax Act of 1986
Description: This regulation provides rules relating to the effective date, return requirements, definitions, and certain special rules covering the generation-skipping transfer tax
Respondents: Individuals or households
Estimated Number of Respondents: 7,500
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: Annually (Form 709) and Other (Form 706 is filed within 9 months after a taxpayer dies.)
Estimated Total Reporting Burden: 3,750 hours
OMB Number: 1545–1156
Regulation ID Number: 26 CFR 1.6001–1
Type of Review: Extension
Title: Records
Description: Internal Revenue Code section 6001 requires, in part, that every person liable for tax, or for the collection of that tax, keep such records and comply with such rules and regulations as the Secretary may from time to time prescribe. Those records are needed to ensure proper compliance with the Code
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Number of Recordkeepers: 1
Estimated Burden Hours Per Recordkeeper: 1 hour
Frequency of Response: Other
Estimated Total Recordkeeping Burden: 1 hour
Clearnace Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–29282 Filed 12–2–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: This document corrects the omission of copies of a new IRS Form 9465 and its instructions, entitled "Installment Agreement Request", which was published November 24, 1992, (FR Doc. 92–28467). We are resubmitting the notice at this time.

Lois K. Holland,

Department Reports, Management Officer.

Dated: November 18, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

SPECIAL REQUEST: The Department is requesting approval of the Internal Revenue Service Form 9465, described below, by December 3, 1992. This form has to be printed and mailed out to tax practitioners by December 14, 1992. To allow public comment and review, the form and its instructions accompany this notice. Comments should be received by close of business December 1, 1992.

Internal Revenue Service

OMB Number: New
Form Number: IRS Form 9465
Type of Review: New collection
Title: Installment Agreement Request
Description: This form will be used to the public to provide identifying account information and financial ability to enter into an installment agreement. The form will be used by IRS to establish a payment plan for taxes and to the Federal government, if appropriate.
Respondents: Individuals or households, State and local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 9,500,000
Estimated Burden Hours per Respondent: 10 minutes
Frequency of Response: On occasion
Estimated Total Reporting: 1,520,000
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

BILLING CODE 4830–01–M

Installment Agreement Request

O.M.B. No.
Expires:

Taxpayer name(s) as shown on the tax return			Taxpayer identification number *(SSN for primary & secondary filers)* or EIN		
Address			City	State	ZIP Code
Business telephone number *(include area code and extension number, if any)*		Most convenient time for us to call you	Home telephone number *(include area code)*		Most convenient time for us to call you
Form number & tax period	Amount owed	Amount paid with return	Proposed monthly payment amount	Payment date requested *(Must be the 1st through the 28th day.)*	
Your signature		**Date**	**Spouse's signature *(joint returns only)***		**Date**

If you pay your taxes now, you will avoid additional penalties and interest we will charge under an installment agreement.

If you are unable to full pay the amount owed at this time, please complete Form 9465, Installment Agreement Request. The intent of this procedure is to allow you to pay your tax liability in 6 to 36 months. You will be notified of our decision on your request for an installment agreement. Meanwhile, make payments for as much as possible to reduce the penalty and interest, which, under law, must continue to accrue until the balance is paid in full.

Please attach the completed Form 9465 to the Internal Revenue Service correspondence or tax return and mail to the appropriate Internal Revenue Service office.

Make your check or money order payable to the Internal Revenue Service, and mark the payment with your name, address, taxpayer identification number, form number and tax period.

Notice in Accordance with Public Law 93-579

We ask for the information on this form under Authority of IRC 6001; 6011; 6012(a); 6109; and 6159 and their regulations. This information is used to process your request for an installment agreement. Form 9465 is provided by the IRS for your convenience. The principal purpose of the disclosure of the name and social security number is to secure proper identification of the taxpayer. We require this information to gain access to the tax information in our files and properly respond to your request. If you do not disclose the requested information, the IRS may not be able to process your request.

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are compiying with these laws and to allow us to figure and collect the right amount of tax.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: 10 minutes.

If you have comments concerning the accuracy of this time estimate or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, Washington, DC 20224, Attention: IRS Reports Clearance Officer, T:FP, and the **Office of Management and Budget** Paperwork Reduction Project (1545-), Washington, DC 20503. **DO NOT** send this form to either of these offices. Instead, refer to the instructions above.

Form **9465** (Rev. 12-92) Catalog No. 14842Y Department of the Treasury – Internal Revenue Service

[FR Doc. 92–29288 Filed 12–2–92; 8:45 am]
BILLING CODE 4830–01–C

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 27, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550–0053
Form Number: None
Type of Review: Extension
Title: Calculation of Application and Filing Fees
Description: 12 CFR 502.3 requires all entities submitting applications and SEC filings to the OTS for approval of proposed transactions to include a statement indicating the amount of the enclosed filing fee and how the fee was calculated. The information is required to ensure that the fee is accurate and to expedite the review processing.
Respondents: Business or other for-profit
Estimated Number of Respondents: 3,200
Estimated Burden Hours Per Respondent: 2 minutes
Frequency of Response: Other
Estimated Total Reporting Burden: 117 hours
Clearance Officer: Colleen Devine, (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G. Street, NW., Washington, DC 20552.
OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–29313 Filed 12–2–92; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 233
Thursday, December 3, 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).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 56404

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 11:30 a.m., Friday, December 4, 1992.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has changed the matters previously announced to be discussed from a Rule Enforcement Review to Enforcement Matters at 11:30 a.m., Friday, December 4, 1992.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–29435 Filed 12–1–92; 8:45 am]

BILLING CODE 6351–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, December 8, 1992, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Corporation Status Report for the Third Quarter of 1992.

Discussion Agenda

Memorandum and resolution re: Statement and Notice of Order, pursuant to the Depository Institutions Disaster Relief Act of 1992, which authorizes the Corporation, during the period ending 180 days after October 23, 1992, to make exceptions from its publication requirements in situations involving applications by State nonmember banks located within disaster areas or involved in transactions or activities within such areas.

Memorandum and resolution re: Statement of Policy on Assistance to Operating Insured Depository Institutions.

Memorandum and resolution re: Proposed amendments to Part 357 of the Corporation's rules and regulations, entitled "Determination of Economically Depressed Regions," which would reflect the Corporation's most recent periodic review and reasonable application of the factors which the Corporation considers in determining which regions are economically depressed.

Memorandum and resolution re: Proposed amendments to Part 362 of the Corporation's rules and regulations, entitled "Activities and Investments of Insured State Banks," which would require insured state banks to obtain the prior consent of the Corporation before directly, or indirectly through a subsidiary, engaging "as principal" in any activity that is not permissible for a national bank.

Memorandum and resolution re: Proposed amendments to Part 333 of the Corporation's rules and regulations, entitled "Extension of Corporate Powers," which would eliminate section 333.3, which makes certain prohibitions applicable to state chartered savings associations applicable to state banks that are members of the Savings Association Insurance Fund.

Memorandum and resolution re: Proposed amendments to the Corporation's rules and regulations, which would eliminate Part 332, entitled "Powers Inconsistent with Purposes of Federal Deposit Insurance Law."

The meeting will be held in the Board room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should contact Llauger Valentin, Equal Employment Opportunity Manager, at (202) 898–6745 (Voice); (202) 898–3509 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: December 1, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–29489 Filed 12–1–92; 2:32 pm]

BILLING CODE 6714–0–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, December 8, 1992, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,844—American Diversified Savings Bank, Costa Mesa, California

Matters relating to the Corporation's corporate activities.

Discussion Agenda

Matters relating to the possible closing of certain insured depository institutions:

Names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: December 1, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–29490 Filed 12–1–92; 2:32 pm]

BILLING CODE 6714–0–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, December 8, 1992 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Wednesday, December 9, 1992 at 9:30 a.m.

PLACE: 999 E Street, NW., Washington, D.C.

STATUS: This Oral Hearing Will Be Open to the Public.

MATTER BEFORE THE COMMISSION:

Definition of "Member" of a "Membership" Organization (11 C.F.R. §§ 100 and 114)

DATE AND TIME: Thursday, December 10, 1992 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1992–40: Patrick M. Poor of Leading Edge Communications, Inc.
Proposed Rules on Transfers Between Federal Candidate Committees
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 92–29512 Filed 12–1–92; 3:26 pm]

BILLING CODE 6715–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–92–31]

TIME AND DATE: December 10, 1992 at 4 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 meeting.
2. Minutes.
3. Ratification List.
4. Invs. Nos. 731–TA–540–541 (Final) (Certain Welded Stainless Steel Pipes from Korea and Taiwan)—briefing and vote.
5. Outstanding action jacket requests none.
6. Any items left for previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205–2000.

Issued: November 30, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–29434 Filed 12–1–92; 11:12 am]

BILLING CODE 7020–02–M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, December 16, 1992, at 10:00 a.m.

ADDRESS: The meeting will be held at Pennsylvania Avenue Development Corporation, Suite 1220N, 1331 Pennsylvania Ave., NW, Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Dated: November 27, 1992.

M.J. Brodie,

Executive Director.

[FR Doc. 92–29515 Filed 12–1–92; 3:27 pm]

BILLING CODE 7630–01–M

POSTAL RATE COMMISSION

TIME AND DATE: 2:00 p.m., December 9, 1992.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Issues in Docket No. MC93–1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW, Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 92–29401 Filed 12–1–92; 8:45 am]

BILLING CODE 7710–FW–M

Corrections

Federal Register
Vol. 57, No. 233
Thursday, December 3, 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 LABOR

Wage and Hour Division

29 CFR Part 578

Minimum Wage and Overtime Violations; Civil Money Penalties

Correction

In rule document 92–26199 beginning on page 49128 in the issue of Thursday, October 29, 1992, make the following correction:

§ 578.3 [Corrected]

1. On page 49130, in the second column, in § 578.3(c)(2), in the seventh line, "if" should read "is".

2. On the same page, in the same column, in § 578.3(c)(3), in the fifth line, "shall" should read "should".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–234–AD; Amdt. 39–8357]

Airworthiness Directives; Boeing 747 Series Airplanes

Correction

In rule document 92–24750 beginning on page 46768, in the issue of Tuesday, October 1, 1992, make the following corrections:

§ 39.13 [Corrected]

On page 46770, in § 39.13, in the second column:

(a) In paragraph (b)(3), in the second line "02–3–4," should read "02–3,–4,".

(b) In paragraph (b)(iv), in the first line "02–2,–3," should read "02–3," and in the fourth line "if" should read "If".

(c) In paragraph (b)(v), in the second line "–3,–4.–6" should read "–3,–4, and –6".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8430]
RIN 1545–AQ07

Procedure for Monitoring Compliance With Low-Income Housing Credit Requirements

Correction

In rule document 92–21156 beginning on page 40118 in the issue of Wednesday, September 2, 1992, make the following corrections:

§ 1.42–5 [Corrected]

1. On page 40122, in the second column, in § 1.42–5(c)(1)(vii), in the third line, "43(d))" should read "42(d))"

2. On the same page, in the third column, in § 1.42–5(c)(3), in the fourth line, "(c)(2) and (2)" should read "(c)(1) and (2)".

3. On page 40123, in the 2d column, in § 1.42–5(e)(2), in the 11th line, "(c)(2(ii)(A),(B) or (c)" should read "(c)(2)(ii)(A),(B) or (C)"

4. On the same page, in the third column, in § 1.42–5(f)(1)(ii), in the sixth line, "preforms" should read "performs".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8434]
RIN 1545–AM16

Treatment of Dual Consolidated Losses

Correction

In rule document 92–21539 beginning on page 41079 in the issue of Wednesday, September 9, 1992, make the following correction:

1. On page 41080:

a. In the 1st column, in the 1st full paragraph, in the 12th line, "not" should read "no".

b. In the same column, in the 2d full paragraph, in the 23rd line, after "year" insert "in".

c. In the 2d column, in the 1st full paragraph, in the 12th line, "been" should read "be".

2. On page 41081, in the first column, in the last paragraph, in the first line, the quotes (") should be removed and in the second line, "a" should read "as".

3. On page 41082, in the second column, in the last paragraph, in the fourth line "it" should read "if".

§ 1.1503–2 [Corrected]

4. On page 41086, in the third column, in § 1.1503–2(c)(16), in *Example 4.*, in the fifth line from the bottom, "DRCI's" should read "DRC1's".

5. On page 41087, in the second column:

a. In § 1.1503–2(d)(3)(i)(A), in the third line from the bottom, after "included" insert "in".

b. In § 1.1503–2(d)(4), *Example 1* (iii), in the fourth and fifth lines, "$1" should read "S1".

c. On page 41088, in the second column, in § 1.1503–2(e)(3), in the sixth line from the bottom, after "be" insert "a".

d. On page 41089, in the second column, in § 1.1503–2(g)(2)(iii)(*1*), in the first line, "an" should read "and".

BILLING CODE 1505–01–D

federal register

Thursday
December 3, 1992

Part II

Department of Education

Office of Education and Rehabilitative Services

National Institute on Disability and Rehabilitative Research; Notices

DEPARTMENT OF EDUCATION

Office of Education and Rehabilitative Services

National Institute on Disability and Rehabilitation Research; Final Funding Priorities for Certain Research and Demonstration Projects

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for Fiscal Years 1993–1994 for certain research and demonstration projects.

SUMMARY: The Secretary announces final funding priorities for Research and Demonstration (R&D) projects under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1993–1994. The Secretary takes this action to focus research attention on areas of national need identified through NIDRR's long-range planning process. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress has taken certain adjournments. If you want to know the effective date of these priorities, call the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–2651. Telephone: (202) 205–9739 Deaf and hearing-impaired individuals may call (202) 205–5516 for TDD services.

SUPPLEMENTARY INFORMATION: This notice contains two final funding priorities in the R&D program. These priorities are for: (1) A project for children with epilepsy, and (2) one or more model projects for burn rehabilitation. Authority for the R&D program of NIDRR is contained in section 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762).

Under this program the Secretary makes awards to public agencies and to nonprofit and for-profit private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

The final priorities support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 351.32), the Secretary may establish research priorities by reserving funds to support particular research activities. These priorities were published for public comment in the **Federal Register** on June 12, 1992 at 57 FR 25025. The Secretary received 33 comments and has made minor changes to the priorities based on those comments. An analysis of the comments and the changes in the priorities since publication of the notice of proposed priorities is provided in the Appendix.

Note: This notice of final funding priorities does not solicit applications. A notice inviting applications under these competitions will be published in this issue of the **Federal Register**.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary will fund under this competition only applications that meet one of these absolute priorities:

Priority 1—Family, Psychosocial, and Transitional Issues of Children With Epilepsy

Background

According to the 1988 National Health Interview Survey, the incidence of epilepsy was 3.8 per thousand in the population (NCHS, 1989). The Epilepsy Foundation of America estimates that 2.5 million children and adults in America have epilepsy (New England Medical Center and Tufts University School of Medicine, 1991). Some 300,000 new cases of epileptic seizure occur annually in the United States, 40 percent of which affect individuals under age 18.

Epilepsy may also be accompanied by other disabilities. For example, epilepsy exists frequently in individuals with mental retardation, cerebral palsy, and autism (McLin, 1991). The consequences of epilepsy are varied and dependent upon, among other factors, the severity of the seizure disorder, the degree of control and the understanding that the individual has, and the support that the child or adult has in coping with the disorder (McLin, 1991).

Children with epilepsy appear to have a higher incidence of adaptation problems than children with other chronic physical conditions (Matthews, 1982; Marglit and Hermann, 1983; Rutter, Graham, and Yule, 1970; Hoare, 1984; Scott, 1979). Little is known, however, about those factors that influence child adaptation to epilepsy (Austin, 1991). The poor self-concept and behavioral problems often exhibited by children with epilepsy have been attributed to problems in the family as a whole, particularly to high family stress and lack of social supports (Austin, 1991).

Other issues affecting adaptation include social support, diagnosis resolution, seizure type and control, child characteristics, and types of parent-child interactions (Pianta, 1991). The consensus of existing research is that a direct relationship does not exist between improving seizure control and improving psychosocial functioning (Parks-Trusz, 1991).

Priority

Any project to be funded in response to this priority must involve children and youth with epilepsy in transition from school to work, and their families, in all phases of the planning, implementation, knowledge utilization activities, and dissemination of the project results.

An absolute priority is announced for a project to support a Research and Demonstration project on children and youth with epilepsy who are in transition from school to work. This project must develop, demonstrate, evaluate, disseminate, and promote the use of new knowledge, about—

- An integrated approach, beginning at the time of diagnosis of epilepsy, to counsel parents, other family members, children and youth with epilepsy, teachers, administrators, vocational rehabilitation professionals, and other students or peers about epilepsy;
- Techniques that might be used by parents, providers of services to children and youth with epilepsy, and educators to foster a sense of independence and control among children and youth with epilepsy;
- Methods to involve the child or youth with epilepsy, and parents or other family members, in the clinical, vocational rehabilitation, and other rehabilitation planning and program of care, especially with regard to the appropriateness and timing of interventions and outcomes of the clinical, vocational rehabilitation and other rehabilitation programs; and
- Techniques to identify and assist children and youth with epilepsy who

are at risk of developing poor self-concepts and behavioral problems that contribute to unemployment, underemployment, and other related social problems of adults with epilepsy.

Priority 2—Model System for Burn Injury Rehabilitation

Background

More than 60,000 people are hospitalized in the United States each year for the treatment of burn injuries. With medical advances in burn care, people are surviving severe burns that cover more than 70 percent of the body surface. Significant impairment may also result from smaller sized burns to such areas of the body as the hands, face, and genitalia. Burn patients undergo multiple operations for skin grafting and repeated admissions to hospitals for reconstructive surgery, and must live with permanent scarring. Individuals who incur severe burns are often left with functional limitations in such areas as reach, grasp, sensation, tolerance for exercise or work due to pulmonary damage, hearing and vision, ambulation, tolerance of heat and cold. A severe burn is considered by many to be the most devastating injury a person can survive (Locke, Rossignol, Boyle, and Burke, 1986). Fire and burn injuries cost $3.8 billion annually (*Cost of Injury in the United States,* A Report to Congress, 1989).

Of the two million people in the United States burned each year, one-half will require medical attention or incur a burn severe enough to restrict daily activities in the home, school, or workplace. One-fourth of these injuries will require bed confinement. The recent report *Healthy People 2000* notes that burns are complex to treat, carry higher risks, require longer hospitalization than other types of injuries, and cause more intense and more prolonged suffering than other traumas.

As defined by the American Burn Association Rehabilitation Committee, the rehabilitation of burn patients includes those therapeutic and social activities, both early and late, the primary goals of which are to restore, with safety and dignity, to fullest possible measure: (1) The individual's physical, psychological, cognitive, and social status, and (2) the role of the individual and the family in the home, school, work, social, and recreational environments.

Recent improvements in mortality rates are attributed to the expansion of specialized burn centers. Approximately one-third of all patients hospitalized for burns are treated yearly in these centers. However, a large number of patients do not remain at a burn center for outpatient treatment but receive care in local hospitals and private clinics (Helm, 1991). A survey of 114 burn centers conducted by the American Burn Association Rehabilitation Committee showed that: (1) One-third of centers with 1 to 80 admissions each year did not have outpatient programs; (2) one-fifth of centers with 81–120 admissions each year did not have outpatient programs; and (3) only 12 percent of burn centers with over 121 admissions did not have outpatient programs. Outpatient care is a critical issue in burn rehabilitation service delivery, as is the provision of long-term social and psychological supports in the community.

Research indicates that early comprehensive and coordinated acute rehabilitation care is likely to improve the outcomes for this population. NIDRR announces a priority that would (1) Demonstrate a comprehensive, multidisciplinary model system of rehabilitative services for individuals with severe burns; and (2) evaluate the efficacy of that system through the collection and analysis of uniform data on system benefits, costs, and outcomes.

The model system demonstration and the collection of uniform and standardized data must be conducted within the context of a comprehensive program of services that coordinates all aspects of care and rehabilitation. The model system must include emergency medical services; intensive and acute medical and surgical care; comprehensive rehabilitation management; psychosocial adjustment services; educational and vocational preparation; and community reintegration with extended follow-along services that promote independence and vocational success. Any projects to be funded under this priority must involve individuals with burn disabilities and their families in planning, implementing, evaluating, and disseminating project activities.

Priority

This funding priority will support one or more Research and Demonstration projects for a model system for burn injury rehabilitation that will—

- Establish, demonstrate, and evaluate a multidisciplinary coordinated system of comprehensive rehabilitation that offers services in rural as well as urban areas to adults with severe burns, from point of injury through intensive and acute medical surgical care, comprehensive medical rehabilitation, vocational rehabilitation, educational preparation, job placement, family and community participation, and long-term community followup;
- Conduct a scientific program of site-specific and collaborative research to generate new information for reducing disability and for treating and rehabilitating individuals with severe burns and related complications;
- Demonstrate and evaluate the development and use of burn injury treatment and rehabilitation methods, equipment, and assistive technology essential to the care, management, and vocational rehabilitation of an individual surviving severe burns;
- Demonstrate and evaluate approaches to independent living, vocational rehabilitation, and community reintegration for severely burned adults;
- Study the clinical course and physiological, family, psychosocial, educational, and vocational adjustment to burn impairments, with special attention to the developmental needs of youth in transition from school to work;
- Participate in clinical and systems analysis studies of the operations and effectiveness of the model system by contributing to a national database in burn injury treatment and rehabilitation to be prescribed by the Secretary; and
- Develop and disseminate educational materials on the rehabilitation of individuals with burn injuries to vocational rehabilitation agencies, individuals with burns and their families, and medical and other professionals who provide in-patient and out-patient care to individuals with burn injuries.

Applicable Program Regulations: 34 CFR parts 350 and 351.

Program Authority: 29 U.S.C. 760–762.

Dated: September 29, 1992.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.133A, Research and Demonstration Projects)

Appendix—Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, 33 commenters submitted comments. Most of the commenters supported the priorities as published. A few commenters requested changes that are discussed in the Appendix. This Appendix contains a synopsis of those comments, as well as the Secretary's responses. The comments are discussed in the order of the priorities to which they pertain.

Family, Psychosocial, and Transitional Issues of Children and Youth With Epilepsy

Comment: One commenter suggested that the proposals to be considered under this priority use current concepts of complexity

to generate rigorous scientific studies of how best to customize education and counseling about the effects of epilepsy. The same commenter also suggested that activities other than information dissemination be undertaken by the successful grantee to assure use and adaptation of the findings of the project.

Discussion: The Secretary agrees that scientific rigor is an important element of this priority The Secretary believes that the existing selection criteria for the NIDRR Research and Demonstration program are adequate to assure scientific rigor. Also, the Secretary agrees with the commenter that extensive efforts should be undertaken to assure use of the findings of the project.

Changes: The Secretary requires the Center to promote the use of new knowledge about each of its research projects.

Comment: One commenter urged that NIDRR emphasize research on and demonstration of intervention strategies that would be most effective in addressing the concerns of individuals with epilepsy and their families.

Discussion: The Secretary agrees with the commenter that the perspectives of individuals with epilepsy and their families should be considered. For this reason, the Secretary has determined that individuals with epilepsy and their families be involved in the activities of the funded project.

Changes: The Secretary requires that any funded project must involve individuals with epilepsy, and their families in all phases of the planning, implementation, knowledge utilization activities, and dissemination of the project results.

Comment: One commenter suggested that the required activities of the project include a formal needs assessment of individuals with epilepsy.

Discussion: While the Secretary agrees with the intent of the commenter, the Secretary does not believe it is necessary that the priority specify this requirement. The Secretary believes a needs assessment is likely to be a part of the integrated approach to counseling children and youth, their parents, and others about epilepsy.

Changes None.

Comment: One commenter suggested that many children or youth with epilepsy develop either poor self-concepts or behavioral problems. Therefore, this commenter suggested that an additional activity be added to the priority to identify children and youth with epilepsy who are at risk of developing poor self-concepts and behavioral problems.

Discussion: The Secretary agrees with the commenter.

Changes. The Secretary requires that the recipient of an award must undertake the additional activity of identifying children and youth with epilepsy who are at risk of developing poor self-concepts and behavioral problems.

Comment. One commenter suggested that NIDRR should support research on providing vocational and other rehabilitation services to individuals with epilepsy. Also, one commenter suggested that resources be provided to support research on children with disabilities.

Discussion: The Secretary agrees with the commenter that NIDRR should support research on providing vocational and other rehabilitation services to individuals with epilepsy. Also, the Secretary agrees that section 204 of the Rehabilitation Act authorizes the Secretary to fund research programs on all age groups including children with disabilities who have epilepsy.

Changes: The Secretary will expand the priority to support research on providing vocational and other rehabilitation services for individuals with epilepsy. Also, the Secretary authorizes funding for research programs on all age groups, including children with disabilities who have epilepsy.

Comment: One commenter suggested that the priority focus on early diagnosis of epilepsy and early intervention at the point of diagnosis.

Discussion: The Secretary agrees that early intervention and early diagnosis are important issues. While the Secretary recognizes the importance of early diagnosis, the activities that are likely to be necessary to achieve replicable models of early diagnosis go beyond the scope of this project.

Changes: The Secretary has modified the priority to require activities that include early intervention at the time of an epilepsy diagnosis.

Model Systems for Burn Injury Rehabilitation

Comment: Two commenters requested a definition of burn injury, and for the priority to require studies to determine how effective rehabilitation is in reducing burn injury size, location, and associated functional loss.

Discussion: The Secretary agrees with the commenters that these are important issues and believes that the priority provides for both activities. The priority requires successful applicants to participate in clinical and systems studies of the operations and effectiveness of the model system by contributing to a national database in burn injury rehabilitation and treatment. This database can be used to generate a definition and a classification scheme for burn injury.

Changes: None.

Comment: Several commenters suggested that the model system for burn injury rehabilitation serve either children, children and adults, or either population, depending on the services available in the burn injury clinic. Another commenter argued that the model system be limited to adults because burn rehabilitation systems research could benefit individuals served by vocational rehabilitation agencies.

Discussion: The Secretary agrees that the model system should be developed for one age group because the treatment is different for children and adults. The burn injury model system will be developed initially to serve and collect data on adults since NIDRR's experience with the model systems for spinal cord injury and traumatic brain injury projects indicates that these systems can be successful with adults. The model systems can be adapted for children later.

Changes: The Secretary has deleted references to children in the priority.

Comment: One commenter suggested that an additional activity be added to require projects to develop and distribute educational materials based on the findings of the system.

Discussion: The Secretary accepts the suggestion of the commenter; such an activity will be included in the priority.

Changes: The Secretary has added an activity to the priority covering the development and distribution of educational materials to appropriate consumers.

Comment: One commenter suggested that the demonstration and evaluation of burn injury treatment and rehabilitation methods be strengthened by adding the phrase "using appropriate sampling, measurement, design, and analysis procedures" to the activity.

Discussion: The Secretary agrees with the need to use the scientific method in the research activity of the priority. However, the Secretary believes the phrase suggested by the commenter is covered by the current language in the priority and by the selection criteria for applications in this competition in paragraph (c) of § 350.34.

Changes: None.

Comment: One commenter requested clarification of the term long-term community followup.

Discussion: The Secretary regards followup to include activities in which members of the burn care team provide rehabilitation to individuals with burns and their families in their communities. It also includes collection of data about client outcomes after return to the community.

Changes: None.

Comment: One commenter suggested that the model system include geographic areas outside the immediate location of metropolitan burn centers.

Discussion: The Secretary agrees with the commenter that the model system of burn injury rehabilitation should include services to geographic areas outside of the urban area in which the burn rehabilitation clinic is most likely to be located.

Changes: The Secretary has added a phrase to the priority requiring the project to serve rural, as well as urban areas.

[FR Doc. 92–29007 Filed 12–2–92; 8:45 am]

BILLING CODE 4000–01–M

Office of Special Education and Rehabilitative Services

[CFDA No.: 84.133A]

National Institute on Disability and Rehabilitation Research; Inviting Applications for New Awards Under the Research and Demonstration Program for Fiscal Year 1993

Note to Applicants

This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under these competitions. The final priorities for the programs included in this consolidated application package are published in this issue of the **Federal Register**. This consolidated application package includes the closing

dates, estimated funding, and application forms necessary to apply for awards under any of these programs. Potential applicants should consult the statement of the final priorities published in this issue to ascertain the substantive requirements for their applications.

The final priorities support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimates of funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86, and, for for-profit organizations and agencies, the cost principles in 48 CFR part 31;

(b) The regulations for this program in 34 CFR parts 350 and 351; and

(c) The notice of final priorities as published in this issue of the **Federal Register.**

APPLICATION NOTICES FOR FISCAL YEAR 1993, RESEARCH AND DEMONSTRATION PROGRAM, CFDA NO. 84.133A

Funding priority	Deadline for transmittal of applications	Estimated No. of awards	Estimated size of awards (per year)	Project period (months)
Family, Psychosocial, and Transitional Issues of Children and Youth with Epilepsy	March 31, 1993	1	$125,000	36
Model Systems for Burn Injury Rehabilitation	March 31, 1993	3	250,000	48

Purpose

Research and Demonstration Projects support research and demonstrations in single project areas on problems encountered by individuals with disabilities in their daily activities. These projects may conduct research on rehabilitation techniques and services, including analysis of medical, industrial, vocational, social, psychiatric, psychological, recreational, economic, and other factors to improve the rehabilitation of individuals with disabilities.

The final priorities support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications under this program:

(a) *Potential Impact of Outcomes: Importance of Program* (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The proposed activity relates to the announced priority;

(2) The research is likely to produce new and useful information (research activities only);

(3) The need and target population are adequately defined;

(4) The outcomes are likely to benefit the defined target population;

(5) The training needs are clearly defined (training activities only);

(6) The training methods and developed subject matter are likely to meet the defined need (training activities only); and

(7) The need for information exists (utilization activities only).

(b) *Potential Impact of Outcomes: Dissemination/Utilization* (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The research results are likely to become available to others working in the field (research activities only);

(2) The means to disseminate and promote utilization by others are defined;

(3) The training methods and content are to be packaged for dissemination and use by others (training activities only); and

(4) The utilization approach is likely to address the defined need (utilization activities only).

(c) *Probability of Achieving Proposed Outcomes: Program/Project Design* (Weight 5.0). The Secretary reviews each application to determine to what degree—

(1) The objectives of the project(s) are clearly stated;

(2) The hypothesis is sound and based on evidence (research activities only);

(3) The project design/methodology is likely to achieve the objectives;

(4) The measurement methodology and analysis is sound (research and development/demonstration activities only);

(5) The conceptual model (if used) is sound (development/demonstration activities only);

(6) The sample populations are correct and significant (research and development/demonstration activities only);

(7) The human subjects are sufficiently protected (research and development/demonstration activities only);

(8) The device(s) or model system is to be developed in an appropriate environment;

(9) The training content is comprehensive and at an appropriate level (training activities only);

(10) The training methods are likely to be effective (training activities only);

(11) The new materials (if developed) are likely to be of high quality and uniqueness (training activities only);

(12) The target populations are linked to the project (utilization activities only); and

(13) The format of the dissemination medium is the best to achieve the desired result (utilization activities only).

(d) *Probability of Achieving Proposed Outcomes: Key Personnel* (Weight 4.0). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training and/or experience and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature and/or methods;

(3) All required disciplines are effectively covered;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its nondiscriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(e) *Probability of Achieving Proposed Outcomes: Evaluation Plan* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

(f) *Program/Project Management: Plan of Operation* (Weight 2.0). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that insures proper and efficient administration of the project(s);

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(g) *Program/Project Management: Adequacy of Resources* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative support and adequate facilities is evident.

(h) *Program/Project Management: Budget and Cost Effectiveness* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The budget for the project(s) is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project(s); and

(3) The budget for subcontracts (if required) is detailed and appropriate.

Eligible Applicants

Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

Program Authority: 29 U.S.C. 761a and 762.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, DC time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: The National Institute on Disability and Rehabilitation Research, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 205–9141; deaf and hearing impaired individuals may call (202) 205–5516 for TDD services.

Authority: 29 U.S.C. 760–762.

Dated: November 24, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Answers to Questions Frequently Asked by Applicants

1. Can I get an extension of the due date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What should be included in the application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What format should be used for the application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I submit applications to more than one program competition in NIDRR or more than one application to a program?

Yes. You may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the allowable indirect cost rate?

The limits on indirect costs vary according to the program and the type of application.

The statutory limit for indirect charges in the Rehabilitation Research and Training Centers program is 15 percent of total project costs.

Applicants in the R&D, D&U, and REC programs should limit indirect charges to the organization's approved rate.

6. Can profitmaking businesses apply for grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can individuals apply for grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs.

8. Is there a cost-sharing or matching requirement?

Cost-sharing is required in the Knowledge Dissemination and Utilization program and the Research and Demonstration Projects program, with certain exceptions noted in the law. For the Rehabilitation Engineering Centers, the Secretary has the option to require matching. It is generally the practice of the agency to require cost-sharing under this program.

There is no set rate for cost-sharing. The cost-sharing rate is negotiated at the time an award is made and is not part of the evaluation of the application.

9. Can NIDRR staff advise me whether my project is of interest to NIDRR or likely to be funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

10. How can I ensure that my application will be referred to the most appropriate panel for review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including the title of the priority to which they are responding.

11. How soon after submitting my application can I find out if it will be funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

12. Can I call NIDRR to find out if my application is being funded?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

13. If my application is successful, can I assume I will get the requested budget amount in subsequent years?

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted for each year of the project and there will be negotiations on the budget each year.

14. Will all approved applications be funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify) _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

BILLING CODE 4000-01-C

Instructions for Part III—Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program, the information regarding the priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

4. The Secretary strongly requests the applicant to limit the Application Narrative to no more than *100* double-spaced, typed pages (on one side only).

Instructions for Estimated Public Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 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. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, DC 20503.

(Information collection approved under OMB control number 1820–0027. Expiration date: July 31, 1995.)

BILLING CODE 4000–01–M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, CSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

_____

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0346-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:

6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, *if necessary*)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, *if necessary*)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OM
0348-0046

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[FR Doc. 92-29008 Filed 12-2-92; 8:45 am]
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federal register

Thursday
December 3, 1992

Part III

Department of Education

34 CFR Parts 600 and 668
Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

RIN 1840–AB46

Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Department's regulations governing, respectively, institutional eligibility under the Higher Education Act of 1965, as amended (HEA), and the student financial assistance programs authorized by title IV of the HEA (title IV, HEA programs). These amendments are necessary to prevent serious abuses of the statutory requirement that an institution seeking eligibility as a proprietary institution of higher education or a postsecondary vocational institution must have been in existence for at least two years (the two-year rule) before being designated as an eligible institution. In general, the regulations require an institution—that was formerly a location of another proprietary institution, postsecondary vocational institution, or vocational school—that is seeking institutional eligibility in its own right, to operate independently of its former "parent" institution for at least two years to satisfy the two-year rule.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ann S. Clough, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, room 3030), Washington, DC 20202–5242. Telephone (202) 708–4906. Deaf and hearing impaired individuals may call (202) 708–8248 for TDD services.

SUPPLEMENTARY INFORMATION: The Institutional Eligibility regulations contain requirements that postsecondary educational institutions must meet to be eligible to apply to participate in HEA programs. The Student Assistance General Provisions regulations contain requirements that are common to institutions participating in the title IV, HEA programs. The title IV, HEA programs are listed in 34 CFR 668.1(c).

The changes in these regulations result from a review of the current U.S. Department of Education (ED) policies and procedures that determine eligibility of additional locations of eligible institutions and independent, freestanding institutions. The review identified possible regulatory changes necessary to address problems related to the uncontrolled expansion of institutions through the addition of locations and the circumvention of the two-year rule in the creation of new eligible institutions.

These regulations seek to improve the efficiency of the title IV, HEA programs and, by so doing, to improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the President's AMERICA 2000 strategy to move the Nation toward achieving the National Education Goals.

On December 4, 1991, the Secretary published a notice of proposed rulemaking (NPRM) for 34 CFR parts 600 and 668 in the **Federal Register** (56 FR 63574). The NPRM included a discussion of abuses and the major issues surrounding the proposed changes. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which discussion of those issues may be found:

Uncontrolled growth of institutions that exceed the administrative and financial capabilities of the expanding institutions (page 63574); and

Circumvention of the two-year rule, which is designed to ensure that an institution has the capacity to operate independently of title IV, HEA program funds before the institution is permitted to participate in these programs and to ensure that an institution exists primarily to provide education and training to students rather than to participate in the title IV, HEA programs (pages 63574 and 63575).

Major Changes to the NPRM

As the result of comments received in response to the NPRM, and the addition of provisions dealing with branch campuses in the HEA, added by the Higher Education Amendments of 1992, Public Law 102–325, the Secretary is withdrawing his proposal to require that each location added by an eligible proprietary institution or postsecondary vocational institution must, in its own right, satisfy the two-year rule independently.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 149 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Technical and other minor changes are not addressed.

Application of the Two-year Rule to Additional Locations of Proprietary Institutions, Postsecondary Vocational Institutions, and Vocational Schools, and to Additional Locations That Seek Conversion to Freestanding, Independently Eligible Institutions (Sections 600.5 and 600.6 and proposed §§ 600.7 and 600.12)

Comments: Many commenters acknowledged that in the past there have been abuses of the institutional eligibility regulations and the student financial aid programs that related to institutional expansion. While acknowledging the need to address the remaining problems, some of these commenters identified problems with the proposed changes. Two commenters said that the examples cited in the NPRM did not fairly represent usual circumstances of expansion. A number of commenters contended that the proposed regulations were too harsh for the problems described in the NPRM. The proposed regulations, they claimed, would prohibit expansion as, realistically, schools today cannot expand without access to title IV, HEA program aid. Some commenters expressed concern that the proposed regulations were too broad and would penalize a great many schools for the irresponsibility of a few.

Other commenters explained that implementation of the regulations would result in unintended consequences or undesirable side effects. Among the problems cited were that the regulations would affect adversely those students who are most in need of education or training yet who are the least mobile and the least able to afford the training. One commenter said that if the proposed regulations were implemented, proprietary schools would be discouraged from taking the financial risk necessary to meet the needs of underserved populations; under current regulations, schools can expand to locations that are convenient to students and they can offer financial support to those students who need it. Several commenters said that the ability

of the affected schools to expand to meet specific community needs—in particular the need for specific skills and the need for re-training—would be eliminated; others pointed out that, unless Federal aid is available for that training, unemployed workers are unlikely to have the personal financial resources required to attend a postsecondary institution. Many commenters noted that the proposed regulations would deny local communities the ability to encourage development of new locations by institutions capable of educating citizens for prospective employment in new industry attracted to their geographic areas. Two commenters expressed concern that the proposed broad references to locations would apply to facilities with no capability to achieve freestanding status.

Three commenters claimed that other Federal agencies, such as the Federal Aviation Administration and the Department of Labor, have an interest in and monitor the expansion of programs under their jurisdiction, yet ED proposes to limit expansion of some of those same programs.

A number of commenters addressed the specific issue of converting an additional location to a freestanding, independently eligible institution. Many commenters supported the proposed changes in the treatment of conversions, including some who opposed the application of the two-year rule to additional locations. Other commenters suggested modifications to the proposed changes affecting conversions.

A few commenters recommended that a branch not be permitted to convert to a freestanding institution unless it had been a branch for at least five years. Other commenters suggested not applying the two-year rule to conversions but, rather, prohibiting the sale of a newly converted institution for a set period of time. One commenter recommended permanent prohibition of conversions to solve the "lease-purchase" problem described in the NPRM on pages 63574 and 63575. Several other commenters believed that the lease-purchase type of abuse was never a large problem and is not a problem now.

Of those opposed to imposing limits on conversions, two commenters expressed concern that students attending an institution that becomes freestanding would lose financial aid because of a technical change in status in the institution; this might then force the students to discontinue their education. One commenter characterized the conversion of locations to freestanding institutions as a prudent business practice, inasmuch as a parent school is vulnerable to the actions of a branch. Other commenters expressed concern that the application of the two-year rule to conversions would prohibit the sale of institutions. One commenter predicted ED would see more institutions fail if the proposed regulations were implemented because school owners who needed to sell schools or parts of schools would not be able to find buyers. Another commenter was worried because he needs to sell his main school and its two branches due to his age and a recent illness; he reasoned that under the proposed regulations, he would need to sell the three schools to one person, which would be almost impossible.

Two commenters questioned whether the application of the two-year rule would deter abuse, as an institution could operate on an exceedingly small scale for two years, then expand rapidly.

The majority of the commenters who believed there are problems to be solved, but that the proposed solutions were overly broad or inappropriate, offered alternatives to the approach proposed in the NPRM. As noted previously, some commenters recommended applying the two-year rule to additional locations seeking to become independently eligible but not to additional locations of institutions that already are eligible. Several commenters recommended that additional locations be granted provisional approval. Others suggested that limits be placed on additional locations, such as:

(1) The main school may have only one branch at a time;

(2) The main school may submit only one application for an additional location per year;

(3) An additional location may offer only courses that are offered at the main school;

(4) An additional location must be within the same State or within a certain distance of the main school;

(5) An additional location may receive only a certain percentage of the financial aid funds available to the institution as a whole; and

(6) An additional location's receipt of title IV, HEA funds may not exceed a certain percentage of total revenues, or only a certain percentage of students may receive title IV, HEA program aid.

A few commenters recommended expanding the list of exceptions in § 600.12 to include regionally accredited, degree-granting institutions, and institutions and additional locations that have been in existence for at least five years. Several commenters recommended that accrediting agencies be required to tighten approval or monitoring procedures. Ten commenters suggested that State licensing authorities should require a test to determine the need for the additional location in their State. One commenter believed branches should be allowed if the main institution can demonstrate need for them.

Some commenters stated that institutions should be treated on a case-by-case basis. Others advocated applying the two-year rule to additional locations and to new freestanding institutions, as proposed in the NPRM, unless the main institution has a good track record with ED, as demonstrated by meeting certain criteria. Recommendations for these criteria included:

(1) A cohort default rate below 20 percent;

(2) Timely submission of all fiscal operations and audit reports;

(3) No significant liabilities owed on misspent title IV, HEA program funds as determined on the basis of an audit or program review;

(4) No administrative action taken against the institution;

(5) No change of ownership within the past year;

(6) No complaints on file against the institution;

(7) Superior financial stability, perhaps demonstrated by a higher current ratio of assets to liabilities than that required by current regulations (for example, 1.5:1 or 2:1);

(8) High placement rate;

(9) Participation in title IV, HEA programs by the institution for at least five years; and

(10) Any other requirements specified by the Secretary.

A number of commenters asserted that the problems cited in the NPRM were due, in part, to the failure of ED to screen and monitor institutions. Some of these commenters asserted that the existing regulations are sufficient and that the solution to the problems lies with improved enforcement of the existing regulations. They urged ED to be more rigorous in its eligibility and certification process, including requiring institutions to document their claims and conducting pre-certification site visits. Many commenters claimed that although problems with branching and conversions to freestanding status existed at one time, they have been solved, to a great extent, as the result of recent strengthening of oversight activities by accrediting agencies, State licensing agencies, and ED. One commenter characterized branches being started today as well-thought out,

well-financed, well-managed, and needed in their communities.

Most of the commenters who believed the problems have been solved pointed to recently strengthened requirements of accrediting agencies that: (1) limit the numbers of additional locations attached to any main campus; (2) require a minimum period of operation for an additional location before another location may be opened; (3) require the educational programs offered at an additional location to be identical to programs offered at the main campus; (4) require monitoring and on-site evaluations of the operations of an additional location by the accrediting agency for a period of one to two years after the additional location is established; and (5) prohibit management or option agreements that would affect a branch's future management. Some of the commenters suggested that the Secretary impose specific requirements on accrediting agencies to provide stricter monitoring of additional locations.

Some commenters noted that in August 1990, ED adopted procedures to review the administrative capability and financial responsibility of the institution as a whole when the institution seeks approval for an additional location. This step was viewed by these commenters as negating the need for additional regulations governing additional locations. Several other commenters believed that the few "bad" schools are no longer in business.

Discussion: The Secretary notes that comments were thoughtful and well-reasoned and that many of the commenters who voiced objections to the NPRM provided constructive suggestions on ways the proposed regulations might be modified. The Secretary appreciated particularly the comments of those individuals who acknowledged the problems and then proceeded to offer tailored solutions. The Secretary does not agree with commenters who said that all the problems identified in the NPRM have been solved or that current regulations are sufficient.

The HEA, as amended by the Higher Education Amendments of 1992, Public Law 102–325, specifically addresses the issue of branch campuses *vis-a-vis* the two-year rule, and many of the suggestions made by the commenters are included in the new subpart H of title IV of the HEA, entitled "Program Integrity Triad." Therefore, the Secretary is withdrawing his proposal to apply the two-year rule to additional locations established by eligible institutions.

However, the Secretary believes that immediate application of the two-year rule in cases of additional locations that become independent institutions is needed. For a freestanding institution, improved assessment and monitoring procedures, including on-site reviews prior to certification, while useful, cannot provide adequate assurance that the new institution is financially stable and administratively sound. Whereas a main institution and its additional locations are linked and the main institution's history of operations is relevant to the operation of the additional location, the financial and administrative "track record" the new freestanding institution presents is not its own, but rather that of another entity. Therefore, the Secretary believes a location of an eligible institution that becomes a freestanding, independent institution must operate independently of its former parent institution and establish its viability as a separate entity for at least two years before it may qualify as an eligible proprietary institution or postsecondary vocational institution. However, the exception in the proposed regulations with regard to a postsecondary vocational institution that qualifies also as an institution of higher education is retained in the final regulations. For a discussion of this provision, see page 63575 of the notice of proposed rulemaking.

Changes: Section 600.12 of the NPRM is withdrawn from these final regulations.

Comment: None.

Discussion: The HEA, as amended by the Higher Education Amendments of 1992, Public Law 102–325, eliminated vocational schools as eligible institutions under the Federal Family Educational Loan Program (formerly the Guaranteed Student Loan Programs), and also deleted the term "vocational school." Therefore, the proposed amendments to the definition of the term "vocational school" in the Institutional Eligibility regulations, § 600.7 (b)(2) and (d), are unnecessary. Comprehensive changes to the Institutional Eligibility and Student Assistance General Provisions regulations—to delete the definition of vocational school and references to vocational schools and to make other revisions necessitated by the Higher Education Amendments of 1992—will be made in other regulations.

Changes: Paragraphs (b)(2) and (d) of § 600.7 are withdrawn from these final regulations.

Comment: A dozen commenters supported the proposed changes. Some of these commenters recommended that the two-year rule be applied in other situations as well: Two commenters recommended that the two-year rule apply to all additional locations, not just to those offering at least 50 percent of an instructional program, and two commenters recommended that the two-year rule also apply to institutions that change ownership.

Discussion: The Secretary acknowledges the suggestions submitted by these commenters. However, as noted above, many of the issues related to additional locations of an institution, including the treatment of branch campuses, must be decided through the rulemaking process as the Secretary proceeds to publish regulations to implement statutory provisions added to the HEA by the Higher Education Amendments of 1992, Public Law 102–325. Comments regarding the application of the two-year rule to changes of ownership are addressed below in the section entitled "Changes of Ownership."

Changes: None.

Comment: One commenter sought clarification regarding the two-year rule for new community colleges. The commenter noted that it appeared a new community college would be able to qualify almost immediately as an institution of higher education. However, the commenter had concluded that the same institution would be required to be in existence for two years before being eligible to meet the definition of a postsecondary vocational institution. Thus, only after two years would students enrolled in vocational programs of less than one year be allowed to participate in title IV, HEA programs. The commenter asked if his understanding of the situation is correct.

Discussion: The commenter is correct. If a student enrolls in a new community college in a program of at least one year in length, that student would be eligible to receive title IV, HEA program funds. However, if that student enrolls in a new community college in a program of less than one year in length, that student would be ineligible to receive title IV, HEA program funds. The new community college would have to offer a program of less than one year for two years before a student enrolled in that program would be eligible to receive title IV, HEA program funds.

Changes: None.

Bias Against Proprietary Institutions and Students Alleged

Comments: Many commenters charged that the proposed regulations would discriminate against proprietary institutions and students. Some of these commenters believed that the proposed regulations would provide an unfair

competitive advantage to public institutions. One commenter was concerned about the implication that institutions of higher education are somehow more administratively capable and financially responsible. Another commenter contended that the proposed regulations were based on outdated statutory definitions. A number of commenters believed it unfair to limit an institution's operation solely on the basis of whether the institution is organized as a public, private non-profit, or private for-profit institution. Some of the commenters were concerned because they believed the proposed regulations discriminated against all non-degree vocational schools.

Other commenters asserted that those who would be hurt the most would be students who could not afford to pay cash; some claimed that the proposed regulations would place an unrealistic burden on students. A number of commenters expressed concern that students enrolled in similar programs at different types of institutions would be treated differently and that some students enrolled in degree-granting programs would be penalized for no reason other than the tax-paying status of the institution. Some of these commenters recommended that all degree-granting institutions be recognized as institutions of higher education. A few commenters took exception to the comment in the NPRM preamble on page 63574 that problems of uncontrolled growth were found particularly in the proprietary sector; three commenters pointed out that there are equally egregious examples of uncontrolled expansions involving non-profit institutions that have misused title IV, HEA program funds that would not be covered by the proposed regulations.

A number of commenters believed that the proposed changes exceeded the Secretary's authority. Some commenters questioned what they perceived as ED's proposal to treat "institutions" and "locations" as synonymous terms, when they are not. Others contended that the NPRM contradicted the intentions of Congress as expressed in the HEA. Several commenters characterized the proposed regulations as restraining trade and free enterprise and stifling growth.

Discussion: The Secretary does not agree with those commenters who contend the proposed regulations are discriminatory because of the types of institutions and students they would affect. The changes proposed in the regulations were designed to address the application of the two-year rule. The two-year rule is an element in the statutory definitions of a proprietary institution and a postsecondary vocational institution. The two-year rule is not an element in the statutory definitions of an institution of higher education; therefore, by definition, the two-year rule does not apply to an institution of higher education.

This does not mean, however, that the Secretary is unconcerned about abuses committed by institutions of higher education to which some of the commenters alluded. In the instances referred to, there was no uncontrolled expansion resulting from adding accredited, eligible, subordinate locations to eligible institutions. In those cases, the regulations that were abused were ones that allow an institution to enter into a written agreement with an ineligible institution for the ineligible institution to provide a part of the educational program to students enrolled in the eligible institution. (34 CFR 600.9). Therefore, while the Secretary considers these final regulations to be necessary to correct one type of abuse, the Secretary has been reexamining the current regulations governing written agreements and might publish an NPRM to request public comment on proposals to tighten those regulations.

Changes: None.

Timing of Notice of Changes Questioned

Comments: A number of commenters noted that the proposal is badly timed because the HEA is being amended and reauthorized, and provisions in the House and Senate reauthorization bills, either directly or through strengthening of the State approval, eligibility and certification processes, address the issue of branch campuses. These commenters recommended that ED wait for congressional action before embarking on the regulatory process. One commenter added that promulgation of final regulations now would be neither an appropriate use of scarce resources nor an effective exercise of ED's regulatory authority.

Discussion: The Secretary notes that while additional authority to address abuses has been granted through reauthorization of the HEA, application of the two-year rule in cases of additional locations that become independent institutions is needed now.

Changes: None.

Comments: Two commenters believed the issues surrounding the abuse of the two-year rule should be studied further before regulations are finalized. One of these commenters recommended that ED representatives meet with representatives of higher education associations to determine the current scope of the problems and the best ways of dealing with the problems. The other commenter suggested issuing a new NPRM requesting comments and suggestions on criteria by which the Secretary may grant a waiver.

Discussion: Prior to and after publishing the NPRM, ED representatives had discussions with representatives of the higher education community. Further, in response to the request for comments on the NPRM, several accrediting associations provided information on the steps they have taken to limit institutional branching and to strengthen their approval processes. ED reviewed the data these associations provided on the number of branches currently approved, the number of branch campus applications in process, and the number of applications processed in previous years, prior to changes in branch campus approval procedures. He has determined that the regulations should be amended at this time to apply to additional locations seeking to become freestanding, independently eligible institutions. However, as ED proceeds to develop regulations to implement the amended HEA, the Secretary will entertain further discussion regarding treatment of additional locations.

The Secretary received numerous suggestions for criteria to use in waiving the two-year rule. However, the Secretary was unable to adopt such an approach because he has no statutory authority to waive the two-year rule.

Changes: None.

Comments: Several commenters said that there are many unemployed and dislocated workers who need retraining and that failure to recognize these needs of the workforce will significantly affect our country's competitive stature. Thus, this is not a good time to limit expansion of training opportunities. One commenter noted that some community colleges cannot continue to offer open enrollment due to tight State budgets while, at the same time, because of the economy, there is increased demand by students for more and better training. The commenter concluded that expansion of community colleges is not the option it once might have been. With that avenue of expansion closed or closing, the commenter suggested that it is also important not to preclude the expansion of other types of institutions that can meet these needs.

Discussion: The Secretary agrees with the commenters that unemployed and dislocated workers need access to retraining and other educational opportunities. Therefore, the Secretary modified the proposed regulations to

apply the two-year rule only to additional locations seeking to become freestanding, independently eligible institutions.

Changes: As indicated above, § 600.12 of the NPRM is withdrawn from these final regulations.

Comment: One commenter asked the Secretary to consider whether appropriate time was provided for public comment on the NPRM, inasmuch as the NPRM, which was published on December 4, 1991, was not received by some institutions until January 1992. This shortened the normal comment period.

Discussion: The **Federal Register** is available throughout the nation within a day or two of publication. Moreover, the Secretary received a large number of comments by the close of the official public comment period so it appears that there was sufficient time for comment.

Changes: None.

Relocation of Existing Institutions

Comments: Several commenters requested clarification of the applicability of the two-year rule to a school that relocates temporarily or permanently.

Discussion: So long as the purported relocation of an eligible institution does not result in the establishment of an additional institution, the Secretary would treat the relocation as a change of address. The Secretary makes a distinction between the establishment of a new institution and a change of location for an existing, eligible institution.

Changes: None.

Effect of Proposed Regulations on Applications in Process

Comments: Seven commenters addressed the question of the date when these final regulations will become effective and the effect this will have on activities that had been initiated, but not completed, before the regulations go into effect. They suggested that any change in the regulations be put in place in such a way that institutions in the process of changing status would not be penalized.

Discussion: As indicated in the EFFECTIVE DATE section of this preamble, unless Congress takes certain adjournments, these regulations will go into effect 45 days after they are published in the **Federal Register**. As a result, eligibility applications for new, freestanding institutions will be evaluated on the basis of the regulations in effect on the date that the applicant institution submitted all required application information.

Changes of Ownership (Sections 600.5(b)(2), 600.6(b)(2), and 600.31 and Proposed § 600.7(b)(2))

Comments: Some commenters, noting the phrase "the Secretary does not count any period during which the applicant institution was part of another eligible proprietary institution * * *," questioned whether the two-year rule could be interpreted to include and would be applied to changes of ownership. One commenter recommended requiring that a new institution exist as a main campus for at least two years before a change of ownership would be approved. Three other commenters recommended that the two-year rule be applied to institutions that change ownership or that institutions that change ownership be required to establish escrow agreements.

Discussion: Interpretation of the two-year rule as applicable to institutions that change ownership was neither contemplated by the Secretary when the NPRM was developed nor addressed in the NPRM. The recently reauthorized and amended HEA, however, does address changes of ownership. When the Secretary proposes changes to the regulations governing changes of ownership to reflect the amended HEA, he will consider comments on the issue.

Changes: None.

Comment: One commenter believed § 600.31(a)(6) needed to be clarified for those institutions that, for the purpose of simplicity, have grouped two or more main institutions under one school identification number. The commenter went on to say that these institutions should not be prevented from separating from each other as they actually are separate, main institutions in every respect other than the way in which their student financial aid forms are filed.

Discussion: Section 600.31(a)(6) addresses the situation in which there is only one eligible main institution, with one school identification number (OPE ID), that divides into two or more main institutions. The commenter is referring to situations in which several independently eligible main institutions, each of which has its own OPE ID number, request, and are permitted by the Secretary, to use one OPE ID number to file combined applications and reports for the campus-based and Pell Grant programs. This is purely a funding arrangement that neither reflects nor affects the eligibility status of the individual institutions participating in the arrangement. The commenter is reminded, however, that even if this funding option is exercised for the campus-based and Pell Grant programs, a freestanding institution that has been issued an individual OPE ID number must use that identification number when certifying applications for the Federal Family Education Loan Program (formerly the Guaranteed Student Loan Programs) for its students.

Changes: None.

Institutional Participation Agreement (§ 668.12)

Comments: As mentioned previously in connection with opposition to the Secretary's imposition of limits on conversions, two commenters were concerned that students attending a location that becomes freestanding would lose financial aid because of an institution's technical change in status.

Discussion: The commenters characterized the change in status of a location from a branch of an institution to a freestanding, independent institution as a technical change, but the establishment of a new institution is a fundamental change. Further, the owner of an institution that changes status has control over the decision to make the change and some control over the timing of the change. While students attending a location are generally no longer eligible to receive title IV, HEA program funds at that location as of the date the location becomes a freestanding, independent institution, the owner can minimize the potential disruption. See the provisions of 34 CFR 668.25. Further, affected students have the option of seeking student financial assistance at another already eligible location or institution. While some students may lose financial aid because of an institution's change in status, the need to stem the abuse surrounding conversions is greater than the need to protect the eligibility of a few, potentially affected students.

With respect to timing, a further question arises regarding the date on which the location is converted to a freestanding, independent institution. In general, for an institution to make one of its locations a freestanding, independent institution, it must get the approval of its accrediting association and its State licensing agency. Accordingly, the Secretary determines that an institution has become a freestanding, independent institution when it is both accredited by its accrediting agency as a freestanding institution and approved by its State licensing agency to be a freestanding, independent institution. While students are no longer eligible to receive title IV, HEA program funds as of that date, the institution begins to satisfy the two-year rule as of that date. Section 668.12

has been revised to reflect this provision.

Changes: Section 668.12 is revised to indicate that a program participation agreement no longer applies to or covers a location of an institution when that location ceases to be part of the eligible institution, as would be the case when it becomes a freestanding, independent institution.

Regulatory Flexibility Act Certification

Comments: Four commenters disagreed with the Secretary's Regulatory Flexibility Act Certification. One commenter noted that the certification holds that the regulations would not have a significant economic impact on a substantial number of small entities. This commenter stated that the changes would have an impact only on small entities. Another commenter also said the proposed rule would have a significant negative impact on small entities. A third commenter stated that, contrary to the Secretary's certification, the proposed regulations would have a significant economic impact on a substantial number of small schools and the students they will serve in the future. The fourth commenter argued that the development of a new teaching site requires considerable expenditures by the institution and that the Secretary's certification ignores these costs. This commenter also took umbrage with the inference that the regulations would not deny existing eligible institutions access to Federal funds, but only would inhibit expansion financed by access to title IV, HEA program funds.

Discussion: The Secretary disagrees with these arguments. The Regulatory Flexibility Act is concerned with the significant economic impact the regulations might have on a substantial number of small entities. Currently, there are approximately 8500 eligible institutions. In fiscal year 1991, 518 institutions applied for initial eligibility. Most of these institutions were new institutions. A minority of the applicant institutions had previously been locations of other eligible institutions. Of these, many were not small entities. Thus, the certification is correct.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in that order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 600

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and record-keeping requirements, Student aid.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and record-keeping requirements, Student aid.

Dated: November 25, 1992.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.032 PLUS Program; 84.032 Supplemental Loans for Students Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; 84.226 Income Contingent Loan Program; 84.063 Pell Grant Program; 84.069 State Student Incentive Grant Program)

The Secretary amends parts 600 and 668 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1094, and 1141, unless otherwise noted.

2. Section 600.5 is amended by removing the last sentence in paragraph (a)(7); by redesignating paragraph (b) as paragraph (c); by removing the cross-reference "(b)(1)" in redesignated paragraph (c)(2) and adding, in its place, "(c)(1)"; and by adding a new paragraph (b) to read as follows:

§ 600.5 Proprietary institution of higher education.

* * * * *

(b)(1) The Secretary considers an institution to have been in existence for two years only if it has been legally authorized to provide, and has provided, during the 24 months (except for normal vacation periods) preceding the date of application for eligibility, a continuous training program to prepare students for gainful employment in a recognized occupation.

(2) In determining whether an applicant institution satisfies the requirement contained in paragraph (b)(1) of this section, the Secretary does not count any period during which the applicant institution was a part of another eligible proprietary institution of higher education, postsecondary vocational institution, or vocational school.

* * * * *

3. Section 600.6 is amended by removing the last sentence in paragraph (a)(6); by redesignating paragraph (b) as paragraph (c); by removing the cross-reference "(b)(1)" in redesignated paragraph (c)(2) and adding, in its place, "(c)(1)"; and by adding a new paragraph (b) to read as follows:

§ 600.6 Postsecondary vocational institution.

* * * * *

(b)(1) The Secretary considers an institution to have been in existence for two years only if it has been legally authorized to provide, and has provided, during the 24 months (except for normal vacation periods) preceding the date of application for eligibility, a continuous training program to prepare students for gainful employment in a recognized occupation.

(2) In determining whether an applicant institution satisfies the requirement contained in paragraph (b)(1) of this section, the Secretary—

(i) Counts any period during which the applicant institution qualified as an eligible institution of higher education;

(ii) Counts any period during which the applicant institution was part of another eligible institution of higher education, provided that the applicant institution continues to be part of an eligible institution of higher education; and

(iii) Does not count any period during which the applicant institution was a part of another eligible proprietary institution of higher education, postsecondary vocational institution, or vocational school.

* * * * *

§ 600.9 [Amended]

4. Section 600.9 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0098)" preceding the citation of authority following the text of the section.

5. Section 600.30 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 600.30 Institutional changes requiring review by the Secretary.

(a) Except as provided in paragraph (b) of this section, an eligible institution shall notify the Secretary in writing, at an address specified by the Secretary in a notice published in the Federal Register, at the same time that it notifies its accrediting agency or association, but not later than 10 days after the change occurs, of any change in the following information provided in the institution's eligibility application:

* * * * *

6. In § 600.31, paragraph (a) is amended by removing the word "and" at the end of paragraph (a)(4); removing the period and adding "; and" at the end of paragraph (a)(5); and adding a new paragraph (a)(6), to read as follows:

§ 600.31 Change in ownership resulting in a change of control.

(a) * * *

(6) If the institution has been divided into two or more institutions, all of the resulting institutions jointly have notified the Secretary in writing as to which one of the resulting institutions they consider to be the same institution.

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

7. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

8. Section 668.12 is amended by adding a new paragraph (f) and by revising the authority citation to read as follows:

§ 668.12 Institutional participation agreement.

* * * * *

(f) An institution's participation agreement no longer applies to or covers a location of the institution as of the date on which that location ceases to be a part of the eligible institution.

(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141)

[FR Doc. 92–29286 Filed 12–2–92; 8:45 am]

BILLING CODE 4000–01–M

federal register

Thursday
December 3, 1992

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 248

Preservation of Multifamily Low Income Housing; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 248

[Docket No. R–92–1622; FR–3377–I–01]

Preservation of Multifamily Low Income Housing

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule implements sections 303, 308(a), 310, 311, 313(b)(2), 314 and 315 of the Housing and Community Development Act of 1992 by amending part 248 of title 24 of the Code of Federal Regulations which sets forth the policies and procedures of the Department of Housing and Urban Development for preserving eligible low income multifamily housing projects. In brief, these amendments revise the definition of "eligible low income housing," eliminate the Windfall Profits Test, reopen the public comment period on the existing regulatory provision governing the delegation of preservation processing to State agencies, limit the scope of the Department's preemption authority, and restrict the Department from requiring participation in a training program as a condition of eligibility and receipt of technical assistance under the 1992 Notice of Fund Availability.

DATES: Effective date: December 3, 1992.

Comment due date: February 1, 1993.

ADDRESSES: Submit written comments to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Standard Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. Telephone, voice (202) 708–2300; TDD (202) 708–4594. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: In order to prevent the potential depletion of the nation's privately-owned low income housing stock through prepayment of HUD-insured or assisted mortgages, Congress enacted title II of the Housing and Community Development Act of 1987, the Emergency Low Income Housing Preservation Act of 1987 (Pub. L. 100–242; 12 U.S.C. 1715*l* note), as amended by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100–628) ("ELIHPA"). ELIHPA established an incentive program governing the prepayment of mortgages and the cancellation of mortgage insurance contracts on eligible low income multifamily housing projects in cases where, but for ELIHPA, owners would be free to prepay the HUD-insured or assisted mortgages without the Department's approval.

Subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act, the Low Income Housing Preservation and Resident Homeownership Act of 1990 (Pub. L. 101–625; 12 U.S.C. 4101 *et seq.*, approved November 28, 1990) ("LIHPRHA"), instituted a permanent, comprehensive preservation program. Its basic objectives are to assure that the "prepayment" inventory of assisted housing is preserved and remains affordable to low income households and to provide opportunities for tenants to become homeowners, while at the same time fairly compensating owners for the value of their properties.

Subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act in effect amended title II of the Housing and Community Development Act of 1987 to repeal and replace ELIHPA with LIHPRHA, except that section 604 of title VI contained a transition provision permitting certain owners to elect to proceed under ELIHPA rather than LIHPRHA. Under section 604(c) of LIHPRHA, the provisions of ELIHPA as they existed on November 27, 1990 apply to projects where the owner elected to proceed under ELIHPA. Because of this transition provision, the Department of Housing and Urban Development (the "Department" or "HUD") is currently administering preservation programs for eligible low income housing under both LIHPRHA and ELIHPA.

On September 21, 1990, the Department published a final rule at 55 FR 38944 implementing ELIHPA. On May 2, 1991, the Department published a proposed rule at 56 FR 20262 devising policies and procedures for implementing LIHPRHA. On April 8, 1992, after receiving and considering comments on the proposed rule, the Department published an interim rule at 57 FR 11992 implementing LIHPRHA (the "April 1992 interim rule").

Subtitle A of title III of the Housing and Community Development Act of 1992 (Pub. L. 102–550; approved October 28, 1992) ("title III") amends LIHPRHA. This interim rule implements certain provisions of title III by amending part 248 of the Department's regulations, as addressed in the following discussion. Sections 315, 316 and 332 of title III direct the Department to issue interim or final regulations within 30, 45 and 90 days, respectively, from the enactment date of the Housing and Community Development Act of 1992. This rule complies with the 30-day rule requirement and also implements certain provisions of title III which fall within the 90-day rule requirement. The remaining provisions of title III will be implemented in the two subsequent rulemakings.

Note that the following discussion refers to LIHPRHA when addressing statutory changes that affect title II of the Housing and Community Development Act of 1987, as amended by LIHPRHA, and refers to ELIHPA when discussing changes which affect title II of the Housing and Community Development Act of 1987, as in effect on November 27, 1990, the day before enactment of LIHPRHA.

Subpart B—Prepayments and Plans of Action Under the 1990 Act

Section 248.101 (Definitions)

Section 310 of title III amends the definition of "eligible low income housing" established in section 229(10)(A)(i) of LIHPRHA, to provide explicitly that eligibility for section 221(d)(3) market-rate projects is limited to projects that are receiving loan management section 8 assistance as a result of conversion from Rent Supplement Assistance. Section 229(10)(A)(i), before this amendment, appeared to include section 221(d)(3) projects that were receiving other forms of section 8 assistance. Section 313(b)(2) of title III amends the ELIHPA definition of "eligible low income housing" in the same manner. Page 72 of the Senate Report to the National Affordable Housing Act Amendments of 1992, S. 3031, Rep. No. 102–332, 102d Cong., 2d Sess. (the "Senate Report") indicates that this amendment is intended to correct a drafting error and that the original intent of Congress was to include in the preservation program only those section 221(d)(3) market-rate projects that were assisted under the Rent Supplement program but have been converted over to the section 8 loan management program.

Accordingly, this rule amends 24 CFR 248.101 to remove references to 24 CFR parts 880 and 881 in the description of section 221(d)(3) projects that are "eligible low income housing" and to insert a requirement that assistance under part 886, subpart A must be as a result of a conversion from Rent Supplement assistance.

Section 248.133 (Second Notice of Intent)

Section 303 of title III amends section 216(d) of LIHPRHA by requiring that an owner, upon filing a second notice of intent with the Department, simultaneously file a copy of the second notice of intent with the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located and with the mortgagee, and shall inform the tenants of the housing of the filing. Section 248.133(c) currently imposes these requirements on an owner and there is no need to amend the regulations to comply with this provision.

Section 248.145 (Criteria for Approval of a Plan of Action Involving Incentives)

Section 308(a) of title III amends section 222 of LIHPRHA by eliminating the Windfall Profits Test. In order to comply with this provision, this rule has amended paragraph (a)(1) of § 248.145 to remove the requirement that the Department conduct the windfall profits test as a condition of approving a plan of action for incentives. The notice setting forth the procedures for conducting the windfall profits test, published by the Department on April 8, 1992, at 57 FR 12064 and entitled "Interim Guidelines for the section 222(e) Windfall Profits Test," is no longer effective.

Section 248.177 (Delegated Responsibility to State Agencies)

Section 315 of title III directs the Department to implement section 227 of LIHPRHA by issuing interim regulations. The current § 248.177 already implements section 227 and the Department believes it is unnecessary to amend the April 1992 interim rule in response to this statutory direction. However, because section 315 of title III requires issuance of a new interim rule, the Department is reopening the comment period, for 60 days from the date of publication of this rule, on § 248.177, as set out in the interim rule published on April 8, 1992 at 57 FR 11992, 12059. As noted in the preamble to the April 1992 interim rule, at 57 FR 12028, the Department issued application procedures for State agencies on April 10, 1992 in Chapter 1 of HUD Handbook 4350.6, "Processing Plans of Action Under the Low-Income Housing Preservation and Resident Homeownership Act of 1990." To date, the Department has not received any State agency preservation plans under this provision. HUD intends to review all preservation plans upon receipt and to delegate responsibility to State agencies who submit acceptable plans.

Section 248.183 (Preemption of State and Local Laws)

Section 311 of title III amends section 232 of LIHPRHA, which authorizes the Department to preempt certain State and local laws that are contrary to LIHPRHA. Section 232(a) establishes the criteria for preemption, while section 232(b) lists certain categories of State and local laws which generally would not be preempted by paragraph (a). The Department, in § 248.183(c) of the April 1992 interim rule regarded the list in paragraph (b) as exhaustive. However, section 311 amends section 232(b) by adding the phrase "such as any law or regulation," indicating that Congress intends this list to be illustrative, rather than complete. Section 248.183(c) of the April 1992 interim rule has been amended accordingly.

Subpart C—Prepayments and Plans of Action Under the 1987 Act

Section 348.201 (Definitions)

Section 313(b)(2) of title II amends the definition of "eligibility low income housing" in section 233(1)(A)(i) of ELIHPA in the same manner as section 310 of title III amends the LIHPRHA definition of "eligible low income housing." Section 248.201 has been amended to conform to this statutory amendment. The preceding discussion of section 310 addresses the effect of this amendment.

(Conditions of Assistance)

Section 314 of title III prohibits the Department, in certain circumstances, from requiring participation in a training program as a condition of eligibility for or receiving technical assistance pursuant to the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1992 (Pub. L. 102–139). Paragraph (a) of section 314 prohibits a training program requirement for all applicants applying for technical assistance in connection with a project which is proceeding under ELIHPA. Paragraph (b) of section 314 prohibits a training program requirement for all applicants under LIHPRHA unless a training program is available on a nationwide basis by March 1, 1993.

On September 3, 1992, the Department published a Notice of Fund Availability at 57 FR 40570, entitled "Low Income Housing: Technical Assistance Planning Grants for Resident Groups, Community Groups, Community-Based Nonprofit Organizations and Resident Councils" ("NOFA"). The NOFA indicates that all applicants for technical assistance grants must complete training courses as a condition of receiving assistance. Application packages sent to HUD Field Offices and made available to the public on October 5, 1992 contain the same requirement. In order to comply with section 314 of title III, the Department has notified Field Offices to disregard this requirement when reviewing application packages and awarding technical assistance. The Department is also currently amending the instructions sent to Field Offices on October 23, 1992, as HUD Notice 92–81 to delete the training program requirement. The April 1992 interim rule does not address technical assistance, and hence, need not be amended in light of section 314.

Findings and Other Matters

A. Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(d) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

D. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that some of the policies in this rule will have a significant impact on the formation, maintenance and general well-being of the family. Achievement of homeownership by low income families under the regulation can be expected to support family values, by helping families to achieve security and independence, by enabling them to live in decent, safe and sanitary housing, and by giving them the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

E. Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act (5 U.S.C. 601), HUD certifies that this rule does not have a significant economic impact on a substantial number of small entities, because it carries out statutorily-mandated limitations on prepayment of the affected mortgages. Any economic impact is a direct consequence of the statute and is not separately imposed by this rule.

F. Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on November 3, 1992 (57 FR 51392) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.137 (Mortgage Insurance—Rental and Cooperative Housing for Low and Moderate Income Families).

List of Subjects in 24 CFR Part 248

Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department amends title 24, part 248 of the Code of Federal Regulations as follows:

PART 248—PRESERVATION OF MULTIFAMILY LOW INCOME HOUSING

1. The authority citation for part 248 is revised to read as follows:

Authority: 12 U.S.C. 1715*l* note; 12 U.S.C. 4101, *et seq.*; 42 U.S.C. 3535(d).

2. In § 248.101, paragraph (1)(i) of the definition of "eligible low income housing" is revised to read as follows:

§ 248.101 Definitions.

* * * * *

Eligible Low Income Housing. * * *

(1) * * *

(i) Insured or held by the Commissioner under section 221(d)(3) of the National Housing Act and assisted under part 886, subpart A of this title because of a conversion from assistance under 215 of this chapter;

* * * * *

3. In § 248.145, paragraph (a)(1) is revised to read as follows:

§ 248.145 Criteria for approval of a plan of action involving incentives.

(a) * * *

(1) Due diligence has been given to ensuring that the package of incentives set forth in the plan of action is, for the Federal Government, the least costly alternative that is consistent with the full achievement of the purposes of this subpart.

* * * * *

4. § 248.183(c) is revised to read as follows:

§ 248.183 Preemption of State and local laws.

* * * * *

(c) *Laws of general applicability: contractual restrictions.* This section shall not prevent the establishment, continuing in effect, or enforcement of any law or regulation of any State or political subdivision of a State not inconsistent with the provision of this subpart, such as any law or regulation relating to building standards, zoning limitations, health, safety, or habitability standards for housing, rent control, or conversion of rental housing to condominium or cooperative ownership, to the extent such law or regulation is of general applicability to both projects receiving Federal assistance and nonassisted projects. This section shall not preempt, annul or alter any contractual restrictions or obligations existing before November 28, 1990 or voluntarily entered into by an owner of eligible low income housing on or after that date, and that limit or prevent that owner from prepaying the mortgage on the project or terminating the mortgage insurance contract.

5. In § 248.201, paragraph (a)(1) of the definition of "eligible low income housing" is amended to read as follows:

§ 248.201 Definitions.

* * * * *

Eligible Low Income Housing. * * *

(a) * * *

(1) Insured or held by the Commissioner under section 221(d)(3) of the National Housing Act and assisted under part 886, subpart A of this title because of a conversion from assistance under part 215 of this chapter;

* * * * *

Dated: November 25, 1992.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 92–29283 Filed 12–2–92; 8:45 am]

BILLING CODE 4210–27–M

federal register

Thursday
December 3, 1992

Part V

Department of the Interior

Bureau of Indian Affairs

Campo Indian Reservation in San Diego County, California; Availability of a Final Environmental Impact Statement for a Solid Waste Management Project; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability of a Final Environmental Impact Statement for a Solid Waste Management Project on the Campo Indian Reservation in San Diego County, California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that a Final Environmental Impact Statement (Final EIS) for the proposed lease of a portion of the Campo Indian Reservation for development of a solid waste management project is available for final public review. The Campo reservation is located in southeast San Diego County. The project, as proposed, would include a sanitary landfill, a materials recovery facility, and a composting facility. This notice is furnished as required by the National Environmental Policy Act (NEPA) regulations to obtain comments on the Final EIS from government agencies and the public.

DATES: Written comments on the Final EIS should be received on or before January 4, 1993, and should be directed to the Bureau of Indian Affairs (BIA) at the address provided below.

ADDRESSES: Written comments should be addressed to: Mr. Ronald M. Jaeger, Area Director, Sacramento Area Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Mr. Donald B. Knapp, Environmental Quality Specialist, Sacramento Area Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. Telephone (916) 978–4703.

Copies of the Final EIS are available for review at:

Campo Tribal Office, 1779 Campo Truck Trail, Campo, CA 91906
BIA Sacramento Area Office, 2800 Cottage Way, Sacramento, CA 95825
BIA Southern California Agency, 3600 Lime Street, Suite 722, Riverside, CA 92501
San Diego City Library, 820 E Street, San Diego, CA 92101
San Diego Branch Library, 31466 Highway 94, Campo, CA 91906–0207
Alpine Branch Library, 2130 Arnold Way, Alpine, CA 91901

A copy of the Final EIS has been sent to all agencies and individuals who received a copy of the Draft EIS or submitted comments on the Draft EIS, and to others who have requested a copy. A limited number of additional copies are available. Individuals wishing to receive a copy of this Final EIS for review should immediately contact Science Applications International Corporation, Environmental Programs Division, 121 Gray Avenue, suite 101, Santa Barbara, California, 93101, Attention: Mr. Richard A. Kentro. Telephone (805) 966–0811.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs, Department of the Interior, in cooperation with the Campo Band of Mission Indians, has prepared a Final EIS on the proposed lease of a portion of the Campo Indian Reservation in San Diego County, California. The Campo Bank proposes to lease the land to Muht-Hei, Inc., a tribal corporation chartered and wholly owned by the Campo Band.

Muht-Hei, Inc., proposes to develop an integrated solid waste management project including a sanitary landfill, a materials recovery (recycling) facility, and a composting facility. The project would be located on the reservation of the Campo Band of Mission Indians in southeastern San Diego County, California. The technical services of Mid-American Waste Systems, Inc. and Campo Projects Corporation would be used pursuant to subleases and other agreements.

The sanitary landfill, materials recovery, composting, and ancillary facilities would be located on a site of about 600 acres within the 1,150-acre lease area. The remaining 550 acres of lease area that surround the site would provide an undeveloped buffer area between the site and private lands to the east and to the south.

Proposed actions outside the lease area would include upgrading of an existing dirt road to provide a 1.7-mile paved access road from State Highway 94 to the site, truck delivery of water from an off-site location on the reservation, and delivery of solid waste to the site via the San Diego & Imperial Valley (SD&IV) Railroad.

The proposed use of the SD&IV Railroad to deliver municipal solid waste is an important feature of the proposed project. The SD&IV Railroad (formerly the San Diego & Arizona Eastern Railroad) is a short-line railroad that operates between San Diego and El Cajon and also from San Diego south to San Ysidro, then across the border at Tijuana, Mexico and east to Tecate, Mexico. Although little used east of Tecate, the line re-enters the United States near the town of Campo and crosses the Campo Reservation before continuing east. As proposed, almost all of the waste materials delivered to the project site would arrive via rail haul on the SD&IV Railroad. Rail haul provides a unique and potentially less expensive means to haul waste materials to a distant disposal site. The Proposed Site at the Campo Reservation is ideally located to take advantage of the existing railroad.

The proposed sanitary landfill would be classified as a Class III (non-hazardous) solid waste disposal facility according to the Campo Environmental Protection Agency (CEPA) regulations for solid waste management (V CTR ¶ 505.23) and the California Code of Regulations (23 CCR Division 3, Chapter 15). Sludges from water or wastewater treatment plants may be accepted if they meet U.S. EPA and CEPA regulatory standards. However, hazardous wastes would not be accepted. The landfill area would be approximately 400 acres. The capacity of the landfill site is estimated to be up to 45 million cubic yards of waste (about 28 million tons). The proposed waste delivery rate is up to 3,000 tons per day (tpd) for approximately 30 years.

The proposed Materials Recovery Facility (MRF) would house the recycling activities and would provide temporary storage for recovered materials prior to shipment to markets. The MRF would be located adjacent to the north side of the landfill.

The proposed composting facility would be located on approximately 10 acres near the MRF. The proposed composting process is referred to as "in-vessel" composting, which is carried out with all initial ingredients and biochemical reactions in a completely closed system. The product would be a high quality compost, selectively suitable for sale to the agricultural, gardening, and landscaping markets.

Indian tribes are sovereign nations, thus, the permitting requirements of state and local regulatory agencies do not apply to their reservations. CEPA has been empowered by the Campo tribal government to adopt and enforce standards and regulations specifically designed to protect the environment and tribal lands. Permitting and environmental standards would be enforced by CEPA under adopted codes and procedures. The standards must, at a minimum, meet the applicable standards of the U.S. EPA, BIA, and other federal agencies.

The principal alternatives have been considered and evaluated in the Draft EIS (February 1992) and in the Final EIS. The alternatives to the proposed action include two alternative site locations on the reservation. Also evaluated are the alternatives of a reduced waste stream and a reduced

area of disturbance. The No-Action Alternative is also evaluated.

Other government agencies and members of the public have contributed to the planning and evaluation of the project and to the preparation of this EIS. The scoping process for the Campo Solid Waste Management EIS began with the publication of a Notice of Intent (NOI) in the September 26, 1989, Federal Register. Public scoping meetings were held on October 12 and 13, 1989, at the Campo Reservation, in the town of Campo, and in Chula Vista, California, to obtain input from agencies and the interested public.

A Notice of Availability (NOA) for the Campo Solid Waste Management Draft EIS was published in the Federal Register on March 6, 1992. Public hearings were conducted on April 6, 1992, in San Diego and at the Mountain Empire High School near Pine Valley, California; and on April 7, 1992, at the Campo Indian Reservation. The Draft EIS was available for public review and comment from March 6 to June 8, 1992.

Agencies and individuals are urged to provide comments on this Final EIS within 30 days after publication in the Federal Register. All comments received by January 4, 1993, will be considered in preparation of the Record of Decision (ROD) for the proposed action.

This notice is published pursuant to Section 1503.1 of the Council of Environmental Quality regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 436 et seq.), Department of the Interior Manual (516 DM 1–7), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: November 27, 1992.

David J. Matheson,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92–29306 Filed 12–2–92; 8:45 am]

BILLING CODE 4310–02–M

federal register

Thursday
December 3, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Turtle Mountain Band of Chippewa Indians and the State of North Dakota; Approved Tribal-State Compact; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Turtle Mountain Band of Chippewa Indians and the State of North Dakota; Approved Tribal-State Compact

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary, Indian Affairs, Department of the Interior, through his delegated authority has approved the Gaming Compact Between the Turtle Mountain Band of Chippewa Indians and the State of North Dakota, which was enacted on October 7, 1992.

DATES: This action is effective December 3, 1992.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Interim Staff Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–0994.

Dated: November 27, 1992.

Eddie F. Brown,

Assistant Secretary, Indian Affairs.

[FR Doc. 92–29307 Filed 12–2–92; 8:45 am]

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